

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

BULLETIN 706

APRIL 15, 1946.

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APRIL 15, 1946.

ERWIN B. HOCK
Deputy Commissioner.

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

In the Matter of Disciplinary
Proceedings against

WILLIAM G. OELSCHLEGEL
T/a TANSBORO CAFE
Blue Anchor Road, Tansboro
Winslow Township
P.O. R.F.D. Berlin, N. J.,

Holder of Plenary Retail Consump-
tion License C-11, issued by the
Township Committee of the Township
of Winslow.

CONCLUSIONS
AND ORDER

William G. Oelschlegel, Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

Defendant has pleaded non vult to a charge alleging that he possessed illicit alcoholic beverages at his licensed premises in violation of R. S. 33:1-50.

On February 26, 1946, an investigator of the State Department of Alcoholic Beverage Control seized one 4/5 quart bottle labeled "Four Roses A Blend of Straight Whiskies", when his field tests disclosed that the contents thereof were not genuine as labeled. Subsequent analysis by the Department chemist verified the findings of the investigator.

The discrepancies in the contents of the bottle seized permits only one conclusion, that is, that the bottle had been partly or wholly refilled with another whiskey.

Defendant, in submitting his plea, denies any personal connection with the refilling. The gravamen of the offense, however, is possession, and a licensee must be held responsible for any "refills" found in his liquor stock even though personally innocent of any tampering therewith and regardless of the fact that he cannot account for the violation. Cf. Re Barrale, Bulletin 705, Item 5, and cases cited.

Defendant has no prior adjudicated record. In the absence of aggravating circumstances, I shall suspend the license for the minimum time indicated in cases of this type, fifteen days. Re Rudolph, Bulletin 680, Item 1.

Accordingly, it is, on this 5th day of April, 1946,

ORDERED, that Plenary Retail Consumption License C-11, issued by the Township Committee of the Township of Winslow to William G. Oelschlegel, t/a Tansboro Cafe, for premises on Blue Anchor Road, Tansboro, Winslow Township, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. April 15, 1946, and terminating at 2:00 a.m. April 30, 1946.

ERWIN B. HOCK
Deputy Commissioner.

3.

ACTIVITY REPORT FOR MARCH, 1946

ARRESTS:	
Licensees and employees - - - - -	3
Bootleggers - - - - -	7
Total number of persons arrested - - - - -	10
SEIZURES:	
Total number of stills seized - - - - -	1
Total number of motor vehicles seized - - - - -	3
Alcohol - gallons - - - - -	.25
Brewed malt alcoholic beverages (beer, ale, etc.) - gallons - - - - -	48.8
Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons - - - - -	104.7
RETAIL LICENSEES:	
Total number of premises inspected - - - - -	1096
Total number of premises where alcoholic beverages were gauged - - - - -	643
Total number of bottles gauged - - - - -	10308
Total number of premises where violations were found - - - - -	104
Total number of violations found - - - - -	167
Type of violations found:	
"Fronts" (concealed ownership) - - - - -	4
Illicit liquor - - - - -	77
Other mercantile business - - - - -	2
No sign denoting legal sale hours - - - - -	
off-premises consumption - - - - -	20
Price pamphlet not displayed - - - - -	4
Prohibited signs - - - - -	26
Stock disposal permits necessary - - - - -	3
Unqualified employees - - - - -	19
Other types of violations - - - - -	12
STATE LICENSEES:	
Premises inspected - - - - -	3
License applications investigated - - - - -	25
COMPLAINTS:	
Investigated, reviewed and closed - - - - -	443
Investigation assigned, not yet completed - - - - -	222
LABORATORY:	
Analyses made - - - - -	174
"Shake-up" cases (alcohol, water and artificial coloring) - - - - -	8
Liquor found to be not genuine as labeled - - - - -	63
IDENTIFICATION BUREAU:	
Criminal fingerprint identifications made - - - - -	
Persons fingerprinted for non-criminal purposes - - - - -	12
Identification contacts with other enforcement agencies - - - - -	170
Motor vehicle identifications via N. J. State Police Teletype - - - - -	7
DISCIPLINARY PROCEEDINGS INSTITUTED:	
Cases transmitted to municipalities - - - - -	18
Violations involved:	
Fraud in application - - - - -	1
Gambling (cards) - - - - -	1
Bookmaking - - - - -	2
Hindering investigation - - - - -	2
Hostesses - - - - -	1
Lewdness - - - - -	1
Prostitutes - - - - -	1
Sale during prohibited hours - - - - -	7
Sale to minors - - - - -	6
Unqualified employees - - - - -	1
Cases instituted at Department - - - - -	23
Supplemental charges - - - - -	2
Violations involved:	
Fraud and front - - - - -	3
Illicit liquor - - - - -	17
Lewdness - - - - -	1
Sale during prohibited hours - - - - -	3
Sale to minors - - - - -	1
Sale under Fair Trade price - - - - -	1
Cases brought by municipalities on own initiative and reported to Department - - - - -	10
Violations involved:	
Brawls - - - - -	6
Fraud in application - - - - -	1
Sale during prohibited hours - - - - -	1
Sale to intoxicated persons - - - - -	2
Sale to minors - - - - -	3
HEARINGS HELD AT DEPARTMENT:	
Total number of hearings held - - - - -	41
Appeals - - - - -	5
Disciplinary proceedings - - - - -	29
Eligibility - - - - -	5
Seizure - - - - -	1
Application for license - - - - -	1
PERMITS ISSUED:	
Total number of permits issued - - - - -	760
Unqualified employees - - - - -	111
Solicitors - - - - -	130
Social affairs - - - - -	210
Home manufacture of wine - - - - -	3
Disposal of alcoholic beverages - - - - -	207
Miscellaneous permits - - - - -	99

ERWIN B. HOCK
Deputy Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary
Proceedings against

WOMEN'S 11th WARD DEMOCRAT CLUB
1014 North 27th Street
Camden, New Jersey,

CONCLUSIONS
AND ORDER

Holder of Club License CB-14,
issued by the Municipal Board of
Alcoholic Beverage Control of
the City of Camden.

E. George Aaron, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

Defendant-licensee, through its attorney, pleads non vult at the hearing to charges alleging that alcoholic beverages were served upon its licensed premises during prohibited hours on January 13, 1946, in violation of an ordinance adopted by the Board of Commissioners of the City of Camden on December 27, 1934.

The departmental file discloses that members of the local police department entered defendant's premises about 4:45 a.m. and observed thirteen men and women drinking alcoholic beverages.

Defendant herein had its license suspended by the State Commissioner for a period of five days, effective November 1, 1945, for permitting a slot machine on the licensed premises. See Bulletin 683, Item 4. Under all the circumstances, I shall suspend defendant's license for a period of twenty days.

Accordingly, it is, on this 8th day of April, 1946,

ORDERED, that Club License CB-14, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Women's 11th Ward Democrat Club, for premises 1014 No. 27th Street, Camden, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. April 17, 1946, and terminating at 2:00 a.m. May 7, 1946.

ERWIN B. HOCK
Deputy Commissioner.

5. APPELLATE DECISIONS - ZAHORBENSKI v. JERSEY CITY, PILIPENKO AND STARVAGGI - ORDER.

RENEWALS - EQUITABLE RELIEF AFFORDED GIVING APPLICANT THE RIGHT TO APPLY FOR TRANSFER OF LICENSE RENEWED FOR OTHER PREMISES.

WASYL ZAHORBENSKI,)
Appellant,)
-vs-) ON APPEAL
BOARD OF COMMISSIONERS OF THE)
CITY OF JERSEY CITY, and OLGA) O R D E R
PILIPENKO and SALVATORE)
STARVAGGI,)
Respondents)

Solomon & Miller, Esqs., Attorneys for Petitioner, Salvatore Starvaggi.

On March 18, 1946, Conclusions and Orders were entered herein whereby the transfer from 79 Clinton Avenue to 203 Railroad Avenue, Jersey City, of Salvatore Starvaggi's plenary retail consumption license issued for the fiscal year 1944-45 was reversed, and whereby the transfer from Salvatore Starvaggi to Olga Pilipenko of Plenary Retail Consumption License C-485 issued for the present fiscal year, for premises at 203 Railroad Avenue, Jersey City, was also reversed. (See Bulletin 702, Item 7.)

As a result of said orders, Salvatore Starvaggi must be considered as holding, on June 30, 1945, a plenary retail consumption license for premises at 79 Clinton Avenue. Under these circumstances Salvatore Starvaggi would ordinarily have been entitled, upon petition duly filed, to an order permitting him to file application for renewal of License C-485 for premises 79 Clinton Avenue, Jersey City, within thirty (30) days after March 18, 1946. Wardach v. Camden, Bulletin 487, Item 4.

It appears from a duly verified petition of Salvatore Starvaggi filed herein that the premises at 79 Clinton Avenue have been sold, and that they are now occupied by the new owner of said premises; that petitioner has rented premises known as 70 Sterling Avenue, Jersey City, and that he intends to apply to respondent Board of Commissioners for a transfer of License C-485 from 79 Clinton Avenue to 70 Sterling Avenue, Jersey City. Petitioner requests that an order be entered herein granting him the right and privilege to apply for such transfer, and ordering the Board of Commissioners of the City of Jersey City to consider the application for transfer upon its merits. Petitioner has paid to the City of Jersey City the full amount of the required license fee for the present fiscal year for License C-485. Under the circumstances the petitioner is entitled to relief.

Accordingly, it is, on this 8th day of April, 1946,

ORDERED, that, solely for the purpose of permitting a transfer of License C-485, the Board of Commissioners of the City of Jersey City may amend its records to indicate the issuance of License C-485 for the present fiscal year for premises at 79 Clinton Avenue, instead of 203 Railroad Avenue; and it is

FURTHER ORDERED that, if an application is filed by Salvatore Starvaggi within ten (10) days from the date hereof with the Board of Commissioners of the City of Jersey City for a transfer of License C-485 from 79 Clinton Avenue, Jersey City, to 70 Sterling Avenue,

Jersey City, said application shall be considered by said Board upon its merits, and that said Board of Commissioners may, in its discretion, grant the application for said transfer upon compliance with all statutory requirements concerning the transfer of a license and upon being satisfied that the transfer from premises to premises is permissible under the ordinance of the City of Jersey City relating to the minimum distance between licensed premises.

It is FURTHER ORDERED that, if the transfer be granted, the entire license fee paid to the City of Jersey City upon the renewal of License C-485 for the present fiscal year shall be retained, in addition to the transfer fee paid upon the application to transfer said license from 79 Clinton Avenue to 70 Sterling Avenue, Jersey City

ERWIN B. HOCK
Deputy Commissioner.

6. DISCIPLINARY PROCEEDINGS - ORDER ESTABLISHING SUSPENSION PERIOD
(SEE BULLETIN 682, ITEM 1).

In the Matter of Disciplinary
Proceedings against

JOSEPH J. COYLE, SR.
T/a SHEER'S RESTAURANT
S/W Cor. New Jersey & Spruce Aves.
North Wildwood
P. O. Wildwood, New Jersey,

O R D E R

Holder of Plenary Retail Consumption
License C-16, issued by the Mayor
and Common Council of the City of
North Wildwood.

A plea of non vult was entered in this case to a charge alleging the possession of two bottles of alcoholic beverages, the contents of which were not genuine as labeled. Because the licensed premises were then closed, the Commissioner's order dated October 16, 1945, suspending the license for a period of fifteen days, provided that the effective date of the suspension would be postponed until the premises were reopened for business. Re Coyle, Bulletin 682, Item 1.

Investigation discloses that defendant has recently resumed business at his licensed premises. Under the circumstances, the penalty of fifteen days will be reimposed, commencing Monday, April 15, 1946.

Accordingly, it is, on this 9th day of April, 1946,

ORDERED, that Plenary Retail Consumption License C-16, issued by the Mayor and Common Council of the City of North Wildwood to Joseph J. Coyle, Sr., t/a Sheer's Restaurant, for premises on S/W cor. New Jersey & Spruce Avenues, North Wildwood, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. April 15, 1946, and terminating at 2:00 a.m. April 30, 1946.

ERWIN B. HOCK
Deputy Commissioner.

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

In the Matter of Disciplinary)
Proceedings against)

RALPH & O'NEIL CERRATO)
253 Heller Parkway)
Newark 7, N. J.,)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consump-)
tion License C-348, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)
-----)

Giuliano & Giuliano, Esqs., by Anthony Giuliano, Esq.,
Attorneys for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

The defendants pleaded not guilty to a charge alleging that they possessed a 4/5 quart bottle of "Canadian Club Blended Canadian Whisky" and a 4/5 quart bottle of "Seagram's V. O. Canadian Whisky A Blend", both of which contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

On February 7, 1946, an ABC agent tested the defendants' open stock of eighteen liquor bottles and seized the two bottles in question. Chemical analysis disclosed that the contents of both bottles were not genuine as labeled.

The defendants do not dispute that the two bottles were found at their licensed premises and that the contents of both bottles did not conform to original samples of the same products. They contend, however, that they did not tamper with either bottle and that they cooperated fully with the ABC agent at the time the violation was discovered.

No valid defense is discernible in the fact that the defendants did not personally participate in the offense. Re Kurian, Bulletin 517, Item 2. As to their cooperation with the ABC agent, this is mandatorily required under the Alcoholic Beverage Law. See R. S. 33:1-35.

The defendants are guilty as charged. In view of the absence of any previous record, the license will be suspended for the usual fifteen-day period. Cf. Re Nurse, Bulletin 680, Item 7.

Accordingly, it is, on this 9th day of April, 1946,

ORDERED, that Plenary Retail Consumption License C-348, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Ralph & O'Neil Cerrato, for premises 253 Heller Parkway, Newark, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. April 15, 1946, and terminating at 2:00 a.m. April 30, 1946.

ERWIN B. HOCK
Deputy Commissioner.

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

In the Matter of Disciplinary
Proceedings against

JOSEPH & STELLA ATRASHEWSKI
20 Garibaldi Avenue
Newark 5, N. J.,

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consump-
tion License C-978, issued by the
Municipal Board of Alcoholic
Beverage Control of the City of
Newark.

Klein & Klein, Esqs., Attorneys for Defendant-licensees.
Harry Castelbaum, Esq., appearing for Department of Alcoholic
Beverage Control.

The defendants plead non vult to a charge alleging that, on February 2, 1946, they possessed a 4/5 quart bottle of "Schenley Reserve Blended Whiskey", the contents of which were not genuine as labeled, in violation of R. S. 33:1-50.

The defendants' son-in-law, employed at the licensed premises as a part-time bartender, admitted in a written statement that, without the knowledge of the defendants, he had poured the small remaining contents of several liquor bottles into the bottle in question. It further appears from the statement that the son-in-law had recently been discharged from military service after four years in the U. S. Navy and was unaware that the refilling of the bottle in question constituted an infraction of the Alcoholic Beverage Law.

While the foregoing explanation raises a sympathetic appeal, it does not present any defense to the violation. A licensee must be held to strict accountability for the condition of his stock of liquor. Despite his personal innocence, the defendant must accept full responsibility for all "refills" found on his licensed premises. Re Kurian, Bulletin 517, Item 2.

Since this is the first time that the defendants have been cited in disciplinary proceedings, the usual fifteen-day penalty will be imposed. Cf. Re Rudolph, Bulletin 680, Item 1.

Accordingly, it is, on this 9th day of April, 1946,

ORDERED, that Plenary Retail Consumption License C-978, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Joseph & Stella Atrashewski, for premises 20 Garibaldi Avenue, Newark, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. April 15, 1946, and terminating at 2:00 a.m. April 30, 1946.

ERWIN B. HOCK
Deputy Commissioner.

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

In the Matter of Disciplinary)
 Proceedings against)

BETTY DECKERT HENCINSKI)

T/a BETTY'S)

Crescent Blvd. and Nicholson Rd.)

West Collingswood Heights)

Haddon Township)

P.O. Mt. Ephraim, New Jersey,)

CONCLUSIONS

AND ORDER

Holder of Plenary Retail Consump-)
 tion License C-11 issued by the)
 Township Committee of the Township)
 of Haddon.)

-----)
 William T. Cahill, Esq., Attorney for Defendant-licensee.
 William F. Wood, Esq., appearing for Department of Alcoholic
 Beverage Control.

Defendant has pleaded non vult to a charge alleging that she possessed illicit alcoholic beverages at her licensed premises, in violation of R. S. 33:1-50.

On February 18, 1946, an investigator of the State Department of Alcoholic Beverage Control seized four 4/5 quart bottles labeled "Four Roses A Blend of Straight Whiskies", when his field tests disclosed that the contents thereof were not genuine as labeled. Subsequent analysis by the Department chemist verified the findings of the investigator.

Defendant, in submitting her plea, denies any personal connection with the violation. She must, however, even if personally innocent, be held strictly responsible for any "refills" found in her liquor stock. Cf. Barrale, Bulletin 705, Item 5. The usual suspension for cases similar to the instant case is twenty days. Re Johnson, Bulletin 680, Item 10. However, in 1942 a license then held by defendant in Camden was suspended for three days for selling alcoholic beverages to women over the bar in violation of a local ordinance. Re Hencinski, Bulletin 546, Item 3. In view of this prior record, I shall suspend the license for twenty-five days. Cf. Re Kovacs, Bulletin 687, Item 10.

Accordingly, it is, on this 9th day of April, 1946,

ORDERED, that Plenary Retail Consumption License C-11, issued by the Township Committee of the Township of Haddon to Betty Deckert Hencinski, t/a Betty's, for premises on Crescent Blvd. and Nicholson Road, West Collingswood Heights, Haddon Township, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 2:00 a.m. April 15, 1946, and terminating at 2:00 a.m. May 10, 1946.

ERWIN B. HOCK
 Deputy Commissioner.

10. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - PERMITTING LICENSED PREMISES TO REMAIN OPEN, IN VIOLATION OF LOCAL ORDINANCE - SALE OF ALCOHOLIC BEVERAGES IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM, IN VIOLATION OF RULE 6 OF STATE REGULATIONS NO. 30 - LICENSE SUSPENDED FOR A PERIOD OF 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

DOMINICK DeCARLO)
424 E. Homestead Avenue)
Palisades Park, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-15, issued by the)
Borough Council of the Borough of)
Palisades Park.)
- - - - -)

Joseph W. Marini, Esq., Attorney for Defendant-licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic
Beverage Control.

Defendant has pleaded non vult to charges alleging that (1) on February 16, 1946, between 3:00 a.m. and 3:45 a.m., he sold alcoholic beverages on his licensed premises in violation of Section 16 of the local ordinance which prohibits any such activity between the hours of 3:00 a.m. and 6:00 a.m. on weekdays; (2) he failed to keep his licensed premises closed after 3:00 a.m., the local closing hour, in further violation of said Section 16; (3) on said date, about 3:22 a.m., he sold a 4/5 quart bottle of Philadelphia Blended Whiskey, in violation of Rule 1 of State Regulations No. 38; and (4) on said date he sold the said 4/5 quart bottle of Philadelphia Blended Whiskey below the minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

On the morning in question, about 2:25 a.m., agents of the Department of Alcoholic Beverage Control entered the licensed premises. A number of customers were being served. At 3:00 a.m., while the agents were still on the licensed premises together with other customers, the licensee personally extinguished all outside lights and closed the venetian blinds but continued to do business. Thereafter, on at least three separate occasions, agents of this Department or other customers purchased alcoholic beverages from the licensee. At about 3:22 a.m. one of the agents requested the licensee to sell him a bottle of whiskey. The licensee sold the agent a bottle of Philadelphia Blended Whiskey for \$3.85. The Fair Trade price of this commodity is \$3.86. At about 3:50 a.m. the agents advised the licensee as to their identity.

The licensee, in admitting all the charges, states, through counsel, that he had come to the licensed premises at about 1:00 a.m. and that because of the return of his brother from overseas he had been previously celebrating with other members of his family and was "feeling good and friendly toward the world." While this might be the reason for the licensee's activity after 3:00 a.m., nevertheless it does not constitute any justification. The attorney for defendant explained that the sale of the bottle of whiskey at once cent below the Fair Trade price was due to the fact that the licensee did not have any pennies for change.

Counsel for the licensee contends that the four violations, while altogether different in character, really stem out of the same

offense, that is, remaining open after hours. However, they cannot be regarded simply as a single offense.

The licensee has no prior record. Without attempting to impose a separate period of suspension for each offense, I shall suspend his license for a period of twenty-five days, less five days for the plea, making a total suspension of twenty days.

Accordingly, it is, on this 9th day of April, 1946,

ORDERED, that Plenary Retail Consumption License C-15, issued by the Borough Council of the Borough of Palisades Park to Dominick DeCarlo for premises 424 E. Homestead Avenue, Palisades Park, be and the same is hereby suspended for a period of twenty (20) days, commencing at 3:00 a.m. April 17, 1946, and terminating at 3:00 a.m. May 7, 1946.

ERWIN B. HOCK
Deputy Commissioner.

11. APPELLATE DECISIONS - RUFOLO v. HARRISON - DISCONTINUED.

FELICE RUFOLO,)	
)	
Appellant,)	
)	
-vs-)	ON APPEAL
)	O R D E R
MAYOR AND COMMON COUNCIL OF)	
THE TOWN OF HARRISON,)	
)	
Respondent)	

Joseph A. Burns, Esq., Attorney for Appellant.
Michael J. Bruder, Esq., Attorney for Respondent.

This is an appeal from the refusal of respondent to transfer to appellant a plenary retail consumption license now held by Gerald J. Lawless and Albert Brady for premises at 203 South 4th Street, Harrison.

Because of a substantial dispute between the parties, it appeared at the hearing held herein that there is serious doubt as to whether or not appellant can secure the required possession of the premises covered by the said license.

No decision on the facts and law in the case is necessary because, subsequent to the hearing, the parties hereto have entered into a written stipulation dated April 10, 1946, agreeing to a discontinuance of the case. The appeal will be dismissed.

Accordingly, it is, on this 11th day of April, 1946,

ORDERED, that the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Deputy Commissioner.

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

In the Matter of Disciplinary
Proceedings against

THERESA FRIEDRICHS
T/a TERRY AND FRED'S TAVERN
New Brooklyn Road
Winslow Township
P. O. Sicklerville, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-2, issued by the
Township Committee of the Township
of Winslow.

William T. Cahill, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Department of Alcoholic
Beverage Control.

Defendant has pleaded non vult to a charge that she possessed
illicit alcoholic beverages at her licensed premises, in violation
of R. S. 33:1-50.

On February 26, 1946 an investigator of the State Department
of Alcoholic Beverage Control seized one 4/5 quart bottle labeled
"Canadian Club Blended Canadian Whisky" when his field test dis-
closed that the contents therein were not genuine as labeled.
Subsequent analysis by the chemist employed by this Department
verified the finding of the investigator, and warrants the conclu-
sion that said bottle had been wholly or partially refilled with
another whiskey.

The defendant admits that she refilled the "Canadian Club"
bottle with "Harwood" whisky because of a shortage of "Canadian Club
Whisky".

Licensees have been repeatedly warned that a customer is
entitled to receive what he orders. Re Chapman, Bulletin 701,
Item 13. No substitutes are permitted even if the substitute is a
more expensive beverage. Retailers are not permitted to refill
bottles. Re Leda, Inc., Bulletin 678, Item 1.

Defendant has no previously adjudicated record. In the absence
of any aggravating circumstances, I shall suspend the license for
the minimum period of fifteen days. Re Rudolph, Bulletin 680,
Item 1.

Accordingly, it is, on this 11th day of April, 1946,

ORDERED, that Plenary Retail Consumption License C-2, issued by
the Township Committee of the Township of Winslow to Theresa
Friedrichs, t/a Terry and Fred's Tavern, for premises New Brooklyn
Road, Winslow Township, be and the same is hereby suspended for a
period of fifteen (15) days, commencing at 2:00 a.m. April 17, 1946
and terminating at 2:00 a.m. May 2, 1946.

ERWIN B. HOCK
Deputy Commissioner.

13. APPELLATE DECISIONS - A.B.C. HOLDING COMPANY v. NEWTON AND GORMAN.

A. B. C. HOLDING COMPANY,)
Appellant,)
-vs-) ON APPEAL
CONCLUSIONS AND ORDER
TOWN COMMITTEE OF THE TOWN OF)
NEWTON and JOHN T. GORMAN,)
t/a JOHN'S TAVERN,)
Respondents)

Dolan & Dolan, Esqs., by John T. Madden, Esq. and Bennett A. Robbins, Esq., Attorneys for Appellant.
Ackerson J. Mackerley, Esq., Attorney for Respondent, Town Committee of the Town of Newton.
Vito A. Concilio, Esq., Attorney for Respondent-licensee, John T. Gorman.

This is an appeal from the denial of appellant's application for a plenary retail consumption license for premises known as the Sheridan House located at 45-47 High Street, Newton, and also from the transfer from said premises to 240 Spring Street, Newton, of a plenary retail consumption license held by the respondent, John T. Gorman.

The appellant held a consumption license for the premises on High Street, Newton, from July 1935 to November 1938, when it leased the premises to the respondent, John T. Gorman, and caused its license to be transferred to him. On September 24, 1945 the Town Committee granted Gorman's application for transfer of his license to premises at 240 Spring Street. The appellant's application for a consumption license for the premises on High Street was denied on October 1, 1945.

The Town of Newton, with a population somewhat under six thousand, has issued and outstanding nine consumption licenses. This has been the maximum number of such licenses issued since the adoption of a resolution in June, 1935, fixing a quota of nine consumption licenses for the municipality.

There is apparently no objection to the transfer. It appears that the neighborhood in which Gorman is now located is less congested with liquor places than that where he was formerly situated. The appellant's position seems to be, as stated by its attorney, that it has "no objection (to the transfer) provided the Sheridan House gets one (a license)".

The appellant's application was denied by the unanimous vote of the three Committeemen, all of whom testified at the appeal hearing. They all insisted that the town was now adequately supplied with consumption establishments and that there was no public need and necessity for a tenth license in the community.

The appellant's contention that there is a need for an additional restaurant with a liquor license in the vicinity in question is denied by the respondent Committeemen. They point out that the Cochran House, which is operated as a bona fide hotel and restaurant,

is less than 2,000 feet distant from the premises in question and that, within that distance, there are at least four other consumption establishments. Nor does the fact that the appellant's premises constitute a hotel entitle it, ipso facto, to a liquor license. Cf. Lincoln Avenue Corp. v. Wildwood, Bulletin 540, Item 2.

After a careful consideration of all of the evidence, I conclude that the appellant has failed to sustain the burden of showing that the Committee abused its discretion in granting the transfer application of the respondent John T. Gorman and also in denying the appellant's application for a license and, accordingly, such action is affirmed.

It might also be pointed out that Rule 1 of State Regulations No. 26 would appear to prohibit the use of the initials "A.B.C." by a licensee. That rule provides:

"No licensee of any class shall use any corporate name, trade name, or other name, sign or symbol, which is calculated to or may convey the false impression that the licensee is owned or operated by or enjoys some special or official sanction from the United States Government, the State of New Jersey or any municipality thereof."

Cf. Re Kedes et als., Bulletin 537, Item 11.

Accordingly, it is, on this 11th day of April, 1946,

ORDERED, that the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Deputy Commissioner.

14. EGG NOG - SERVICE BY RETAIL CONSUMPTION LICENSEES PERMITTED
APRIL 18, 1946-April 22, 1946, INCLUSIVE.

Each year during the Easter season the Department has permitted consumption licensees to serve egg nog for a limited period of time.

This year the privilege will be permitted commencing Thursday, April 18th and ending Monday, April 22nd, at midnight.

The attention of all licensees is directed to the fact that over-indulgence in any form is not to be tolerated. Licensees shall be governed accordingly.

ERWIN B. HOCK
Deputy Commissioner.

Dated: April 12, 1946.

15. APPELLATE DECISIONS - KOWALSKI v. HARRISON - REMANDED TO MUNICIPAL ISSUING AUTHORITY.

BENJAMIN J. KOWALSKI,)
Appellant,)
-vs-) ON APPEAL
CONCLUSIONS AND ORDER
TOWN COUNCIL OF THE TOWN OF)
HARRISON,)
Respondent)
-----)

Russel E. Greco, Esq., Attorney for Appellant.
Michael J. Bruder, Esq., Attorney for Respondent.

Appellant appeals from respondent's denial of his application for a plenary retail consumption license for premises 206 North Third Street, Harrison. Appellant's application was duly filed on January 30, 1946.

The application is designated as a "renewal" application and on its face seeks the "renewal" of a license formerly held by appellant for the same premises named in said application. The last license held by appellant expired by its terms on June 30, 1943.

The license was denied, as appears by the petition, the reply thereto, and a stipulation of fact agreed upon by both parties, because the respondent City Council determined that they could not issue a renewal license at this time for a license that had expired on June 30, 1943. This determination was based upon the provisions of R. S. 33:1-96, as amended by P. L. 1944, c. 187, where, in defining a renewal license, the Legislature provided certain tests. The application here being considered admittedly fails to meet this test because it was not intended "to replace a license which expired on the last day of the license term which immediately preceded the commencement of said new license term" and was filed later than thirty days after the commencement of the new license term which began on July 1, 1943. The statute does not exempt applications filed by returning veterans. Respondent, therefore, correctly concluded that it could not consider appellant's application as an application for renewal of the license he held for the fiscal year 1942-43.

This provision of the law does not, however, prohibit the consideration of the instant application as an application for a "new" license.

Appellant is an honorably discharged veteran of World War II. His designation of his application as an application for a "renewal" license can be disregarded. His application should be considered by respondent as an application for a "new" license and required to meet all the tests as to its legal issuance that such a "new" license must meet.

The respondent not having considered the personal qualification of the licensee, the suitability of the premises, the effect of local regulations, the policy of the Town Council as to the issuance

of new licenses, and other proper and necessary considerations incident to the granting or denial of a new license, the matter will be remanded to the respondent local issuing authority for proper action in accordance with this opinion. Nothing herein is to be taken as an expression of opinion as to whether the pending application should be granted or denied.

Accordingly, it is, on this 12th day of April, 1946,

ORDERED, that the proceedings herein be and the same are hereby remanded to the respondent for its further consideration consistent with law and this opinion.

Erwin B. Hock

Deputy Commissioner.