

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

BULLETIN 555

FEBRUARY 26, 1943.

1. DISCIPLINARY PROCEEDINGS - PERMITTING ALIEN, HOLDER OF EMPLOYMENT PERMIT, TO SELL ALCOHOLIC BEVERAGES IN VIOLATION OF RULE 3 OF STATE REGULATIONS NO. 11 AND R. S. 33:1-26 - 5 DAYS' SUSPENSION, LESS 2 FOR GUILTY PLEA.

DISCIPLINARY PROCEEDINGS - SALE AND SERVICE BY ALIEN PERMITTEE CONTRARY TO CONDITION OF EMPLOYMENT PERMIT, IN VIOLATION OF R. S. 33:1-26 - 30 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary
Proceedings against

PENGUIN CLUB INN, INC.
556 Allwood Road
Clifton, N. J.,

Holder of Plenary Retail Consump-
tion License C-123, issued by the
Municipal Council of the City of
Clifton.

In the Matter of Disciplinary
Proceedings against

HENRY HEYSE
120 Broad Street
Newark, N. J.,

Holder of Employment Permit
No. 2365, issued by the State
Commissioner of Alcoholic
Beverage Control.

CONCLUSIONS
AND
ORDERS

Penguin Club Inn, Inc., Pro Se.

Henry Heyse, Pro Se.

Abraham Merin, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee has pleaded guilty to the charge of per-
mitting its employee, Henry Heyse, who holds an employment permit
for a person disqualified by reason of non-citizenship, to sell
alcoholic beverages in violation of R. S. 33:1-26 and also in viola-
tion of Rule 3 of State Regulations No. 11.

Defendant-permittee has pleaded guilty to a charge of selling
alcoholic beverages contrary to the conditions upon which his employ-
ment permit was issued.

Both proceedings will be treated and disposed of herein since
they arise out of the same transaction.

On October 14, 1942 investigators of the Department of Alco-
holic Beverage Control visited the licensed premises and saw Henry
Heyse selling and serving alcoholic beverages. A signed statement
was obtained from the President of the corporation wherein he states
that he knew the permittee was not a citizen and that the permittee
was hired solely as a waiter to dispense food and had been specifi-
cally ordered not to sell or serve alcoholic beverages. In a signed

statement the bartender of the defendant-licensee stated that this was the only occasion when Heyse handled any alcoholic beverages. As soon as the infraction was called to the attention of the employer, the permittee was immediately discharged.

Since no previous record appears against either licensee or permittee, the usual penalties of five days and thirty days, respectively, will be imposed. Two days of the licensee's suspension and five days of the permittee's suspension will be remitted because of the guilty plea. Re Onofrietti, Bulletin 540, Item 1.

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

ORDERED, that Plenary Retail Consumption License C-123, heretofore issued by the Municipal Council of the City of Clifton to Penguin Club Inn, Inc. for premises 556 Allwood Road, Clifton, be and the same is hereby suspended for a period of three (3) days, commencing on February 23, 1943, at 3:00 A.M. and concluding on February 26, 1943, at 3:00 A.M.; and it is further

ORDERED, that Employment Permit No. 2365, heretofore issued to Henry Heyse by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for a period of twenty-five (25) days, commencing on February 23, 1943, at 3:00 A.M. and concluding on March 20, 1943, at 3:00 A. M.

ALFRED E. DRISCOLL
Commissioner.

2. ELIGIBILITY - FACTS EXAMINED - CRIME OF AIDING AND ABETTING PROSTITUTION INVOLVED MORAL TURPITUDE - APPLICANT DISQUALIFIED FROM HOLDING A LIQUOR LICENSE OR BEING EMPLOYED BY A LIQUOR LICENSEE IN THIS STATE.

February 15, 1943

Re: Case No. 480

This is a proceeding to determine subject's eligibility to hold a liquor license or be employed by a liquor licensee in this state.

On May 18, 1942 subject was convicted of assault and battery and fined \$10.00. On June 19, 1942 he was convicted of the crime of aiding and abetting prostitution and sentenced to a three month jail term which, on June 26, 1942, was changed to a fine of \$75.00.

From a report of the circumstances surrounding the latter conviction received from the Prosecutor of the county in which subject was convicted, it appears that subject and Joseph _____ "contacted a Mary _____ in a saloon on _____ Street and propositioned her to entertain men at the _____ tavern where she was taken in _____ (subject's) car and where she entertained men for money, part of which was turned over to Joseph _____, who was convicted of Receiving the Earnings of a Prostitute. _____ (Subject) distributed cards in various places in the city advertising the _____ (tavern)."

These facts indicate the presence of the element of moral turpitude in the crime of aiding and abetting prostitution, of which subject was convicted as aforesaid.

It is recommended that subject be advised that he is disqualified under the Alcoholic Beverage Law (R.S. 33:1-25, 26) from holding a liquor license or being employed by a liquor licensee in this state.

APPROVED:
ALFRED E. DRISCOLL
Commissioner.

Samuel B. Helfand
Attorney.

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

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

CONCLUSIONS
AND ORDER

Case No. 254.
-----)

BY THE COMMISSIONER:

Petitioner in this proceeding prays that her disqualification resulting from convictions of crimes be lifted pursuant to R. S. 33:1-31.2.

Petitioner has never held a liquor license. In January 1935 investigators from this Department purchased a glass of whiskey from the petitioner, who at that time was the proprietress of a small grocery store. They immediately seized one-half gallon of whiskey that was found on the premises. Complaint was thereupon made in the police court and, as a result thereof, petitioner was fined \$100.00 on January 30, 1935 for a violation of a local ordinance.

Subsequent thereto, on June 2, 1936, petitioner was arrested for the sale of whiskey to Department investigators who found one quart of whiskey and twenty-two bottles of "home brew" beer in the building. On July 28, 1936 petitioner again was arrested for sale and possession of alcoholic beverages. None was found on the premises but, upon search of the adjoining house, 247½ gallons of liquor belonging to petitioner were discovered. After indictment by the Grand Jury, both cases were tried together. Petitioner was convicted on both charges and a fine of \$300.00 was imposed by the County Judge together with a six months' sentence in the County workhouse. This latter part of the sentence was thereafter suspended.

Petitioner stated that she was married about four years ago to a person who operates a tavern. She has not been engaged in any business since her marriage. The desire to assist her husband in the business is due mainly to economic conditions.

The unlawful sales and possession of alcoholic beverages occurred over six years ago. Since that time petitioner, who is a woman of mature years, has apparently lived a good life. This fact was testified to by the three friends and neighbors who appeared as character witnesses in her behalf. The violations which she committed are very serious and they have caused me to consider carefully whether she is a fit person to be engaged in the liquor business. However, because of her good conduct during the past six years, I shall give her the benefit of the doubt and conclude that her association with the alcoholic beverage industry will not be contrary to the public interest.

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

ORDERED, that any statutory disqualification that may exist because of the convictions described herein be and the same is hereby lifted, in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - SECOND SIMILAR VIOLATION - 20 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

PALACE DRUG STORES, INC.)
172 Newark Avenue)
Jersey City, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution License D-16, issued by)
the Board of Commissioners of)
the City of Jersey City.)

Palace Drug Stores, Inc., by Jack Mazer, Secretary.
Abraham Merin, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee pleaded guilty to a charge alleging that on January 14, 1943 it sold two one-half gallon jugs of Gambarelli & Davitto G & D American Vermouth below the minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

At the time of the sale, the minimum consumer price for a half gallon of vermouth was \$1.52, and the price for a gallon was \$2.85. The clerk sold the two one-half gallons for \$2.70, the price of a gallon on a previous Fair Trade listing. Even if, as he says, he did not know of the later listing at the higher price, he may not sell two one-half gallon containers for the same price fixed for a one gallon container. Re Caldwell Inc., Bulletin 515, Item 4.

This is the licensee's second violation of the Fair Trade regulations, its license having been suspended in November 1938 for a period of ten days (see Bulletin 284, Item 7). For this second offense I shall suspend the license for twenty days (Cf. Metropolitan Liquor Corp., Bulletin 554, Item 5), less five days for the guilty plea, making a net penalty of fifteen days.

Accordingly, it is, on this 18th day of February, 1943,

ORDERED, that Plenary Retail Distribution License D-16, heretofore issued to Palace Drug Stores, Inc. by the Board of Commissioners of the City of Jersey City for premises 172 Newark Avenue, Jersey City, be and the same is hereby suspended for a period of fifteen (15) days, commencing on February 23, 1943, at 2:00 A.M., and terminating on March 10, 1943, at 2:00 A. M.

ALFRED E. DRISCOLL
Commissioner.

5. DISCIPLINARY PROCEEDINGS - RECONSIDERATION OF PENALTY - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - SECOND SIMILAR VIOLATION - 20 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

GUS STEIN
T/a MARKET WINES & LIQUORS
110 Market Street
Passaic, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-124 for fiscal year 1941-42, issued by the Board of Commissioners of the City of Passaic, which license was renewed for the current fiscal year 1942-43.
-----)

Greenburg, Wilensky & Feinberg, Esqs., by Victor Greenburg, Esq.,
Attorneys for Defendant-Licensee.

G. George Addonizio, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On April 2, 1942 the licensee, having been found guilty of a second violation of the Fair Trade regulations, the license then held by him was ordered suspended for a period of twenty-five days, commencing April 7, 1942. Re Stein, Bulletin 502, Item 1.

On April 6, 1942 I granted the licensee a hearing on his application for a reconsideration of the penalty imposed, and stayed the effective date of the suspension pending decision therein.

The basis for the plea for reduction of the penalty is that my finding that defendant's violations were in each instance deliberate is erroneous. The defendant contends that, in fact, both violations were innocent or unintentional violations.

In imposing the thirty-day penalty for a second deliberate Fair Trade violation, I doubled the penalty for a first deliberate Fair Trade violation, which had then recently been increased from ten to fifteen days.

Since then, I have returned to the policy of imposing a ten-day suspension for a first Fair Trade violation in the absence of a prior record and of aggravating circumstances, irrespective of whether the violation was deliberate or innocent. Re Metropolitan Liquor Corp., Bulletin 554, Item 5.

In the absence of any proof that defendant engaged in "chiseling" on a large scale, it seems only fair that I should give him the benefit of this change in policy. Hence, I shall reduce the penalty to a suspension for a period of twenty days, less five days for the guilty plea, making a net penalty of fifteen days. Cf. Re Palace Drug Stores, Inc., Bulletin 555, Item 4.

Although the original conclusions were entered during the last licensing year, which expired June 30, 1942, the penalty remains fully effective against the defendant's renewal license for the current (1942-43) year. State Regulations No. 15, Rule 3.

Accordingly, it is, on this 18th day of February, 1943,

ORDERED, that the order heretofore entered herein be amended to read as follows:

"ORDERED, that Plenary Retail Consumption License C-124, heretofore issued to Gus Stein, t/a Market Wines & Liquors, by the Board of Commissioners of the City of Passaic, for premises 110 Market Street, Passaic, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 3:00 A.M. on February 23, 1943, and concluding at 3:00 A.M. on March 10, 1943.

ALFRED E. DRISCOLL
Commissioner.

6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - PREVIOUS SIMILAR VIOLATION - 25 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary)	
Proceedings against)	
)	
VICTOR RIVARA)	CONCLUSIONS
46 Hudson Place)	AND ORDER
Hoboken, N. J.,)	
)	
Holder of Plenary Retail Consump-)	
tion License C-3, issued by the)	
Board of Commissioners of the)	
City of Hoboken.)	
-----)	

Victor Rivara, Pro Se.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads guilty to the following charge:

"On or about July 11, 1942, at about 2:40 A.M., you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, and allowed the consumption of alcoholic beverages on your licensed premises, in violation of Section 1 of an Ordinance concerning alcoholic beverages adopted May 19, 1942 by the Board of Commissioners of the City of Hoboken, which Ordinance prohibits any such activity after 2:00 A. M."

The file discloses that two investigators of this Department visited defendant's premises on July 11, 1942. At about 2:15 A.M. the bartender, Kenneth Rivara, son of the defendant-licensee, sold and served them a Scotch whiskey and a Carstairs whiskey and at the same time informed them it was "after two o'clock and if they were going to remain for a while would they go into the back room." The investigators then took their drinks into the back room, where they found eight persons. While seated in this room they observed twelve additional persons enter the premises by the back door and purchase drinks. At about 2:35 A. M. one of the investigators left the back room and went to the bar, where he ordered a Scotch whiskey and a Carstairs whiskey. The bartender told him the waiter would bring the drinks and, five minutes later, the waiter served the whiskeys to the investigators.

As to penalty: This is not the defendant's first violation. On October 19, 1937 he pleaded guilty, before the Board of Commissioners of the City of Hoboken, to a charge of sales of alcoholic beverages on Primary Election Day, and his license was suspended for forty-eight hours. The minimum penalty for selling during prohibited hours is fifteen days. Re Disbrow, Bulletin 540, Item 3. In view of his past record and the facts in this case, I shall suspend defendant's license for twenty-five days. Five days of said suspension will be remitted because of his guilty plea, thus reducing the suspension to twenty days. In determining the length of the suspension I am not unmindful of the fact that the previous violation occurred over five years ago and, therefore, should not weigh as heavily against the licensee as would a more recent violation. On the other hand, the number of customers served by the defendant and permitted to consume alcoholic beverages on the premises during prohibited hours amply warrants the penalty inflicted.

Accordingly, it is, on this 18th day of February, 1943,

ORDERED, that Plenary Retail Consumption License C-3, issued to Victor Rivara by the Board of Commissioners of the City of Hoboken for premises 46 Hudson Place, Hoboken, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 A. M. February 23, 1943, and terminating at 2:00 A.M. March 15, 1943.

ALFRED E. DRISCOLL
Commissioner.

7. RETAIL LICENSEES - MANAGERS - LICENSEE DRAFTED INTO ESSENTIAL WAR INDUSTRY MAY EMPLOY MANAGER - LICENSEE MUST REMAIN THE ACTUAL OWNER AND CONTINUE TO ASSUME FULL RESPONSIBILITY FOR THE CONDUCT OF THE BUSINESS - HEREIN OF THE ADVISABILITY OF GIVING UP THE LICENSE IF LICENSEE CANNOT FIND THE "RIGHT PERSON" TO MANAGE THE BUSINESS DURING HIS ABSENCE.

February 18, 1943

Alvin Newman, Esq.
Asbury Park, N. J.

Dear Mr. Newman:

I have yours of February 10th relating to the recent Federal action designating the wholesale and retail sale of alcoholic beverages as non-essential industry. You state that your client, who holds a plenary retail consumption license, feels that present developments point to his being drafted for work in an essential industry and wishes, therefore, to register with the U. S. Employment Service. You ask, under these circumstances, "whether or not there would be any difficulties in the retention of the liquor license in his name in the event that it becomes necessary for him to leave this vicinity for a period of time."

There is nothing in the Alcoholic Beverage Law or State Regulations to prevent the employment of a manager by the licensee, provided the manager is fully qualified to hold a license in his own right. The licensee must, however, be the real party in interest -- the actual proprietor.

The employment of a manager to carry on the business does not relieve the licensee of any responsibility. A licensee is held fully accountable for what happens on the licensed premises whether in his presence or during his absence.

The Alcoholic Beverage Law provides that all license applications shall be duly sworn to by the applicants. (R. S. 33:1-25). An exception is made for applicants in the military service of the United States whose applications may be signed in their behalf by an attorney-in-fact holding a power of attorney in form approved by the State Commissioner. (P. L. 1942, c. 249, amending R. S. 33:1-25). Since the exception applies only to those in the military service, your client and other licensees who may volunteer, or be drafted, for work in essential industry must themselves make and swear to their license applications.

Speaking generally, I look with strong disfavor upon absentee ownership in connection with liquor businesses. If, however, a licensee's extended absence from his place of business is due to the drafting of industrial manpower as a necessary part of our total war effort, such absence may perhaps be justified. But the licensee must bear in mind that although he may delegate the management of his business to another, he cannot delegate or avoid his responsibilities under the Alcoholic Beverage Law and the State Regulations. The important point is that the manager should be the "right person" - one in whom the licensee can have complete confidence not merely in financial affairs but also as to a wholly proper and law-abiding operation of the business. If the licensee cannot find this "right person", he should get out of the liquor business; otherwise, he runs the serious risk of having his license suspended or revoked.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

8. SIGNS - LICENSEE'S MISLEADING NOTICE THAT LICENSED PREMISES UNDER SUSPENSION ARE "CLOSED FOR REPAIRS" NOT TOLERATED - LICENSEE REQUIRED TO POST NEW NOTICE SETTING FORTH THE TRUTH.

February 18, 1943

Mr. Frank A. Wilkosky
T/a Canary Bird Inn
Linden, N. J.

Dear Sir:

I have investigators' report that on February 17th they observed and seized a cardboard sign about 13½ inches by 10½ inches and a paper sign approximately 4½ inches by 6 inches, both of which were displayed at your licensed premises. The cardboard sign bore the hand printed inscription "Will Reopen Feb. 25 Thurs." and the paper sign, hung on the tavern door, bore the further notation "Closed for Repairs - Canary Bird Inn."

The plain fact of the matter is that your premises were not closed for repairs but were closed because your license had been suspended from February 15th to February 25th by the Linden Board of Alcoholic Beverage Control for having stayed open and sold alcoholic beverages during prohibited hours.

The misleading notice on your tavern door was wholly improper.

Hence, as I have done heretofore with licensees posting such improper notices, you are hereby directed to prepare at once a new sign (which may be hand printed) of the approximate size as the seized cardboard sign, stating the real reason for the closing

of the premises, viz., "License suspended for 10 days for being open and selling during prohibited hours", the letters of the sign to be not less than 2 inches high and of proportionate width.

You are further directed immediately to display this sign at your tavern door in the same position in which your false and misleading notice was displayed and to maintain such sign throughout the balance of the period of suspension of your license.

Violation of these directions will be cause for outright revocation of your license.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

9. ADVERTISING - "CUT RATE" - USE IN NEWSPAPER ADVERTISEMENTS
DEPRECATED - COOPERATION OF LICENSEES EXPECTED.

February 18, 1943

Wolf's Cut Rate
Newark, N. J.

Gentlemen:

My attention has been called to your liquor advertisement in the Newark Sunday Call of February 7, 1943. In that advertisement you use the following caption:

"W O L F ' S
CUT RATE DRUGS.
WINES-LIQUORS
683 Broad St."

It is clear that such a description conveys the impression that the liquor items are being sold at cut-rate prices.

Although there is nothing at present in the Alcoholic Beverage Law or Regulations prohibiting use of the term "cut rate" in a newspaper advertisement of liquors, this Department has disapproved such type of advertisement and has been in hopes that retailers will voluntarily abstain therefrom without the need of any additional regulation or special ruling being put on the books. See Re Whelan Drug Co., Bulletin 335, Item 9.

Hence, may I have your prompt assurance, by return mail, that you will cease and desist from mentioning the phrase "cut rate" in any of your liquor advertisements.

I suggest that in the caption for your liquor advertisements you merely leave out the line "Cut Rate Drugs." In this way your advertisement would properly list the advertised liquor items without any suggestion that such liquor prices are "cut rate."

It must be remembered that the Department, in disapproving liquor advertisements which in any way rely upon a "cut rate" psychology, is validly seeking to curb liquor advertising from reaching a stage (1) where undue sales pressure is exercised on the general public, and (2) at which there may be justifiable public criticism.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

10. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF - CHARGE DISMISSED.

In the Matter of Disciplinary
Proceedings against

HOME WINE AND LIQUOR CO., INC.
38 Market Street
Passaic, N. J.

Holder of Plenary Retail Distribu-
tion License D-6, issued by the
Board of Commissioners of the City
of Passaic.

CONCLUSIONS
AND ORDER

Manfield G. Amlicke, Esq., Attorney for Defendant-Licensee.
Abraham Merin, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The licensee pleaded not guilty to a charge alleging that he sold a quart bottle of "Three Feathers Blended Whiskey" below the established minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

On September 9, 1942, while one ABC investigator was stationed outside to observe what occurred, another ABC investigator entered the licensed premises. The latter testified that, upon being quoted the correct Fair Trade price of \$2.98 for a quart bottle of Three Feathers Whiskey by the clerk, he started to walk out, when he was called back by the clerk and then purchased the bottle for \$2.75. As this investigator was leaving the store, a woman entered and bought a bottle of gin for \$1.15, which amount appeared on the cash register when he returned with the second investigator. They then disclosed their identities to the clerk and informed him that he had made a sale below the fixed price. This the clerk vehemently denied and insisted that he had received the full price of \$2.98.

At the hearing the clerk steadfastly maintained that he had not undersold the bottle in question. In support of his testimony, the licensee produced the tickets ejected from the cash register, and also the tape, which records the amounts of all sales in chronological order. Both the tickets and the tape indicate that the amount preceding the sum of \$1.15, which it is agreed was rung up on the register immediately following the purchase by the investigator, is \$2.98. In addition, neither the tickets nor the tape disclose any sale on the day in question in the sum of \$2.75.

In this posture of the record there is a square conflict in the testimony concerning the alleged violation. On the one hand there is the uncorroborated testimony of one investigator that he paid \$2.75 for the bottle. On the other hand there is the testimony of the clerk that the investigator paid the full price of \$2.98, substantiated by documentary evidence. Justice and fairness dictate that, under such circumstances, I should hold that the Department has not sustained the burden of proving the truth of the charge preferred against the licensee.

Accordingly, it is, on this 19th day of February, 1943,

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

ALFRED E. DRISCOLL
Commissioner.

11. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWERS IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - ILLEGAL SITUATION CORRECTED - 63 DAYS' SUSPENSION.

DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION FOR EMPLOYMENT PERMIT CONCEALING MATERIAL FACTS - EXERCISING THE RIGHTS AND PRIVILEGES OF THE LICENSE - PERMIT SUSPENDED FOR BALANCE OF TERM.

In the Matter of Disciplinary Proceedings against)

FLORENCE GEBHARDT)
T/a PHELPS MANOR GOLF CLUB)
Bennett Road)
Teaneck, N. J.,)

Holder of Plenary Retail Consumption License C-7, issued by the Township Council of the Township of Teaneck.)

CONCLUSIONS
AND ORDER

-----)
In the Matter of Disciplinary Proceedings against)

FRED JOHN GEBHARDT)
943 Warren Parkway)
Teaneck, N. J.,)

Holder of Employment Permit #178, issued by the State Commissioner of Alcoholic Beverage Control.)
-----)

Louis P. Bertoni, Esq., Attorney for Defendant-Licensee and Defendant-Permittee.

Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee pleads guilty to charges alleging:

- (1) She falsely concealed in her license application that Fred J. Gebhardt was a partner in the licensed business;
- (2) She permitted said Fred J. Gebhardt to exercise the rights and privileges of her license;
- (3) She made a false statement in Question #31 by not stating that twenty per cent. of the net profits of the licensed business in excess of \$2,000.00 was to be received by the landlord.

The defendant-permittee, Fred J. Gebhardt, pleads guilty to the charges that:

- (1) He falsely concealed in his permit application that he had an interest in the plenary retail consumption license issued to Florence Gebhardt;
- (2) He exercised the rights and privileges of the plenary retail consumption license issued to Florence Gebhardt.

Both proceedings will be disposed of herein since they arise out of the same transaction.

The departmental file discloses that, for the past fifteen years, Fred J. Gebhardt, a German alien, was manager of the Phelps Manor Golf Club. His time was almost entirely occupied in supervising the maintenance of the golf course and clubhouse. In 1934, solely as an accommodation to the members of the club, Florence Gebhardt, wife of Fred J. Gebhardt, obtained a liquor license and set up a bar and restaurant in the clubhouse. The moneys received from the management of the golf course and the bar were deposited in a joint bank account in the name of husband and wife. Both the husband and wife were, until recently, lessees of the clubhouse. Fred J. Gebhardt ordered all the liquor and other bar necessities, as well as the food for the restaurant, and paid for these commodities out of the joint account. Fred J. Gebhardt obtained an employment permit so that, if necessary, he could act as manager and help out about the bar and in the restaurant.

As a mitigating circumstance, it was explained that Fred J. Gebhardt did not consider he had any interest in the licensed business except to the extent that whatever money he or his wife earned individually belonged to both. Aside from the ordering of supplies as requested, he did not otherwise participate in the management or control of the restaurant or licensed business.

The unlawful situation has been corrected. Fred J. Gebhardt no longer has anything whatsoever to do with the licensed premises. He has removed himself entirely from the confines of the clubhouse and now conducts the golfing business from a building separate and apart from the clubhouse. Florence Gebhardt presently appears to be the sole lessee of the clubhouse.

Because of the foregoing and the frank disclosure of all the facts by both defendants, and their plea of guilty, I shall, as to the defendant, Florence Gebhardt, suspend the operation of her license for a period of sixty days for the violations set forth in charges (1) and (2). See Re Scharmberg, Bulletin 540, Item 4. For the violation set forth in charge (3) I shall suspend the operation of the license for five days, less two for the guilty plea, or a total suspension of sixty-three days.

So far as the defendant-permittee is concerned, his permit will be suspended for the balance of the fiscal year.

Accordingly, it is, on this 19th day of February, 1943,

ORDERED, that Plenary Retail Consumption License C-7, issued by the Township Council of the Township of Teaneck to Florence Gebhardt, t/a Phelps Manor Golf Club, for premises on Bennett Road, Teaneck, be and the same is hereby suspended for a period of sixty-three (63) days, commencing at 2:00 A.M. February 24, 1943, and terminating at 2:00 A.M. April 28, 1943; and it is further

ORDERED, that Employment Permit #178, heretofore issued to Fred John Gebhardt by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for the balance of its term, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

12. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS,
IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS
NO. 20 - 40 DAYS' SUSPENSION.

AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - SALE OF ALCOHOLIC BEVER-
AGES TO MINORS - LICENSEE PAID \$100.00 FINE AND COSTS - IN
DISCIPLINARY PROCEEDINGS LICENSE WAS SUSPENDED FOR 40 DAYS -
LICENSED PREMISES CLOSED MORE THAN 40 DAYS - PETITION TO LIFT
GRANTED.

In the Matter of Disciplinary)
Proceedings against)

JOSEPH B. MAIER and)
SAMUEL VENEZIA)
T/a COTTAGE BAR)
565 Gorge Road)
Cliffside Park, N. J.,)

Holders of Plenary Retail Consump-)
tion License C-12 issued by the)
Mayor and Council of the Borough)
of Cliffside Park.)

CONCLUSIONS

-----)
In the Matter of an Application by)

AND
ORDER

JOSEPH B. MAIER and)
SAMUEL VENEZIA)
T/a COTTAGE BAR)
565 Gorge Road)
Cliffside Park, N. J.,)

to lift Automatic Suspension of)
Plenary Retail Consumption License)
C-12 issued by the Mayor and)
Council of the Borough of Cliffside)
Park.)
-----)

Frank J. Raia, Esq., Attorney for Defendant-Licensees and)
Petitioners.)

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

BY THE COMMISSIONER:

A petition to lift an automatic suspension having been filed,
disciplinary proceedings were thereupon instituted before this De-
partment instead of before the local issuing authorities so that the
entire case could be disposed of in one proceeding.

The charges served upon the licensees allege that, on Decem-
ber 30, 1942, they sold alcoholic beverages to six minors in
violation of R. S. 33:1-77 and that, on the same day, they permitted
the consumption of alcoholic beverages by said minors upon their li-
censed premises in violation of Rule 1 of State Regulations No. 20.

Licensees plead guilty to said charges.

The file in this case shows that, on the evening of December
30, 1942, two investigators of the Department of Alcoholic Beverage
Control entered the licensed premises at about 10:30 P. M. They saw
three couples seated at tables in booths on the side of the barroom.
All six persons appeared to our investigators to be minors. Subse-
quently the investigators learned that the three young men in the

party were respectively 20 years of age, 19 years of age and 18 years of age, and that each of the three young ladies was 18 years of age.

While the investigators were present the young men, on three different occasions, purchased six drinks of alcoholic beverages at the bar from Joseph Maier and carried the drinks to the table, where they were consumed. The licensee at no time asked the age of any of these minors.

As to the petition to lift the automatic suspension: On January 11, 1943, in a court of criminal jurisdiction, Joseph B. Maier pleaded guilty to a charge of selling alcoholic beverages to these minors and was fined the sum of \$100.00 plus \$10.00 costs. Said conviction automatically suspended the license held by him and his partner for the balance of the fiscal year. R. S. 33:1-31.1. The license was picked up by our investigators on January 12, 1943 and turned over to the Borough Clerk. The licensed premises have been closed since that time.

This is petitioners' first offense. However, in view of the number and ages of the minors involved, and the failure to use any precautionary measures against the sale of liquor to them, I shall penalize the licensees for the present violations for a period of forty days. Re Monmouth Old Mill, Inc., Bulletin 548, Item 8.

Under the automatic suspension of the license, defendants' premises have been closed since January 12, 1943, or more than forty days. The elapsed period is hereby fixed as constituting the penalty in the present disciplinary proceedings. Re Inglese, Bulletin 307, Item 1.

The automatic suspension is, therefore, lifted, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

Dated: February 23, 1943.

13. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINOR (SOLDIER) AND PERMITTING THE CONSUMPTION OF SAME ON LICENSED PREMISES, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - SALE OF ALCOHOLIC BEVERAGES TO PERSON (SOLDIER) ACTUALLY OR APPARENTLY INTOXICATED, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 20 - 70 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

PHILIP J. HESS
2 New Street
Paterson, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-299, issued by the Board of Alcoholic Beverage Control of the City of Paterson.

Philip J. Hess, Pro Se.
William F. Wood, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has entered a plea of guilty to the following charges:

"1. On or about September 28, 1942, and on divers days prior thereto, you sold alcoholic beverages to Private Ralph ----, a minor, in violation of R.S. 33:1-77.

"2. On or about the date aforesaid, and on divers days prior thereto, you sold, served and delivered, and allowed, permitted and suffered the service and delivery of alcoholic beverages to Private Ralph ----, a person under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such person upon your licensed premises, in violation of Rule 1 of State Regulations No. 20.

"3. On or about September 6 and 28, 1942, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to Private Ralph ----, a person actually and apparently intoxicated, and allowed, permitted and suffered the consumption of alcoholic beverages by such person upon your licensed premises, in violation of Rule 1 of State Regulations No. 20."

The records before me disclose that, on September 6 and 28, 1942, the defendant sold alcoholic beverages to a minor, namely, Private Ralph ----, a member of the armed forces of the United States. No inquiry appears to have been made on either occasion as to the minor's age.

The seriousness of the violations is emphasized by the presence of the third charge.

On September 6, 1942 Private Ralph ----, who had previously been observed by one of defendant's bartenders "drinking beer and vermouth at a flag raising", entered the premises, ordered, was served and permitted to consume "three or four highballs." The bartender, in response to questions by the A.B.C. agents, stated that the soldier "was feeling pretty good when he came in the tavern." In fact, the defendant's bartender conceded that "he (Ralph) was intoxicated when he entered." It is apparent from the record before me that Private Ralph ---- was "staggering when he entered and he left in the same condition." Notwithstanding his apparent intoxication, the soldier was served and permitted to consume additional drinks containing alcoholic beverages in clear violation of Rule 1 of Regulations No. 20.

On the occasion of Private Ralph ----'s visit to the premises on September 28, 1942, while he appears to have been sober upon his arrival, he reached the stage of actual or apparent intoxication before his departure from the premises. His leaving, incidentally, was accompanied by the destruction of the licensee's front window. In the interval between sobriety and apparent intoxication Ralph ---- purchased from the defendant's bartender a pint of Kessler's whiskey and a glass of beer. After consuming the latter he opened the bottle and poured for himself a succession of drinks, which he likewise consumed upon the premises.

It is to be noted that on at least two occasions the licensee, acting through his agents and servants, sold the soldier in question bottles of whiskey which he was permitted to quaff in whole or in part on the premises. That this practice is fraught with danger to the licensee as well as to the purchaser is demonstrated by this case.

In any event, licensees would be well advised to refrain from selling distilled spirits in original containers for consumption in whole or in part upon the licensed premises. By the same token a due regard for public policy indicates that licensees should carefully refrain from selling alcoholic beverages in original containers to those who quite apparently intend to consume the contents thereof upon the public highway, in the park or down the alley.

Licensees are not compelled by law or regulation to sell alcoholic beverages where common sense, sound policy and a due regard for the future dictate otherwise.

I have repeatedly stated that the sale of alcoholic beverages to minors is a serious violation. The sale of liquor to men in uniform, when they are actually or apparently under the influence of the same, is not only a serious violation but a contemptible and unpatriotic act.

The investigation of the A.B.C. agents discloses that the licensee may not have been on the premises on the occasions of Private Ralph ----'s visits on either the 6th or 28th of September. In fact, it is reported that the licensee was sick during at least a portion of this period. The absence of the licensee from the licensed premises, for whatever cause, does not in any way relieve him of his personal responsibility for the conduct of the licensed premises and the observance of the law by his agents and servants. The doctrine of respondet superior must, of necessity, apply with full force and vigor within the field of liquor control. On the other hand, I am warranted in taking into consideration the fact that the licensee did not personally participate in the violations in question. The licensee appears to have no previous record.

Accordingly, the license will be suspended for seventy days, with a remission of five days for the guilty plea, making a total suspension of sixty-five days.

Accordingly, it is, on this 23rd day of February, 1943,

ORDERED, that Plenary Retail Consumption License C-299, heretofore issued to Philip J. Hess for premises at 2 New Street, Paterson, New Jersey, by the Board of Alcoholic Beverage Control of the City of Paterson, be and the same is hereby suspended for a period of sixty-five (65) days, commencing at 3:00 A.M. February 27, 1943, and concluding at 3:00 A.M. May 3, 1943.

Alfred E. Driscoll
Commissioner.

New Jersey State Library