

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

BULLETIN 621

JUNE 2, 1944.

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STATE OF NEW JERSEY  
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1. DISCIPLINARY PROCEEDINGS - PERMITTING MINOR TO SELL ALCOHOLIC BEVERAGES, IN VIOLATION OF R. S. 33:1-26 AND RULE 1 OF STATE REGULATIONS NO. 11 - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE AND RULE 1 OF STATE REGULATIONS NO. 38 - REFILLING - SALE OF ALCOHOLIC BEVERAGES FOR CONSUMPTION OFF THE LICENSED PREMISES IN OTHER THAN ORIGINAL CONTAINER, IN VIOLATION OF R. S. 33:1-78 AND R. S. 33:1-2 - HINDERING INVESTIGATION, IN VIOLATION OF R. S. 33:1-25 - LICENSE SUSPENDED FOR BALANCE OF TERM.

In the Matter of Disciplinary )  
Proceedings against )

GEORGE SHAPIRO )  
T/a HARMONY TAVERN )  
783 Spruce Street )  
Camden, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-206 issued by the )  
Municipal Board of Alcoholic )  
Beverage Control of the City of )  
Camden. )  
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Bruce A. Wallace, Esq., Attorney for Defendant-Licensee.  
Harry Castelbaum, Esq., appearing for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult to charges alleging, in substance,  
that:

- (1) On December 9, 1943 he permitted Sylvester Shapiro, a minor, to sell and serve alcoholic beverages, in violation of R. S. 33:1-26 and Rule 1 of State Regulations No. 11.
- (2) On Sunday, December 12, 1943, and Sunday, March 26, 1944, he sold alcoholic beverages in original containers after 2:00 A. M., in violation of a local ordinance and Rule 1 of State Regulations No. 38.
- (5) On December 16, 1943 he poured whiskey from one bottle to another bottle and sold the whiskey for consumption off the licensed premises in other than the original container, in violation of R. S. 33:1-78 and R. S. 33:1-2.
- (4) On December 12, 1943, December 16, 1943 and March 26, 1944 he hindered and failed to facilitate an investigation by agents of the Department of Alcoholic Beverage Control, in violation of R. S. 33:1-35.

In alleged mitigation defendant says that he never permitted his son, Sylvester Shapiro, to sell or serve alcoholic beverages, but states that he pleaded non vult to charge (1) to avoid the necessity of a hearing. A review of the file satisfies me that, on the date in question, an ABC investigator observed the son selling four bottles of beer at the licensed premises.

The charge of hindering and failing to facilitate investigations was based upon the action of defendant's wife in refusing to admit the agents for a long period of time after they had identified themselves, and the action of defendant himself who, during the course of an investigation, became abusive towards the agents and advised certain patrons not to give any information to the agents.

As to penalty: In April 1940 the local issuing authority suspended defendant's license for ten days for a sale of alcoholic beverages by a minor on Election Day and, on June 27, 1940, the local issuing authority suspended his license for the balance of its term for sale of alcoholic beverages on Sunday. In view of the past record and the charges herein, I believe that defendant has shown himself to be an unfit person to hold a liquor license. He has represented that he intends to sell his business and retire from same, and that his property wherein the business is located is now up for sale. Under the circumstances, I shall suspend his license for the balance of the term.

Accordingly, it is, on this 25th day of May, 1944,

ORDERED, that Plenary Retail Consumption License C-206, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to George Shapiro, t/a Harmony Tavern, for premises 783 Spruce Street, Camden, be and the same is hereby suspended for the balance of its term, effective at 2:00 A. M. May 31, 1944.

ALFRED E. DRISCOLL  
Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE AND RULE 1 OF STATE REGULATIONS NO. 38 - 20 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against  
FRANK CORADO  
T/a FRANK'S CAFE  
601 Ferry Avenue  
Camden, N. J.,  
Holder of Plenary Retail Consumption License C-26, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.  
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CONCLUSIONS  
AND ORDER

William T. Cahill, Esq., Attorney for Defendant-Licensee.  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleads guilty to charges alleging that he sold and delivered alcoholic beverages during prohibited hours on Sunday, March 12, 1944, in violation of Section 5 of the local ordinance and Rule 1 of State Regulations No. 38.

The sale and delivery of alcoholic beverages is prohibited by local ordinance in the City of Camden after 2:00 A. M. on Sunday. The sale and delivery on Sundays of alcoholic beverages in original containers for consumption off the premises is prohibited by Rule 1 of State Regulations No. 38.

Agents of the Alcoholic Beverage Control Department, at 12:30 P. M. on the day in question, observed a person leaving the premises by way of a rear door carrying a package. The package, upon examination, proved to be a one-quart bottle of cold beer. The "customer" readily admitted receiving it from the licensee but states it was given to him. The licensee denies making any charge for the same and states that it was given to the "customer" in return for a favor done the licensee in assisting in making some repairs to his equipment.

Even if the licensee did not charge for the beer, the fact remains that "delivery" is prohibited by both regulations in question, and, in addition, the Alcoholic Beverage Law defines "sale" as including delivery. R. S. 33:1-1(w). Re Wozniak, Bulletin 611, Item 4.

Defendant has no prior record. Inasmuch as the single offense constitutes a violation of both the ordinance and the State Regulations, I shall suspend the license for twenty days on both charges, with a remission of five days for the guilty plea, leaving a net suspension of fifteen days. Re Wasiluk, Bulletin 608, Item 10.

Accordingly, it is, on this 25th day of May, 1944,

ORDERED, that Plenary Retail Consumption License C-26, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Frank Corado, t/a Frank's Cafe, for premises 601 Ferry Avenue, Camden, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 A. M. May 31, 1944, and terminating at 2:00 A. M. June 15, 1944.

ALFRED E. DRISCOLL  
Commissioner.

3. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against  
POLISH NATIONAL HOME ASSOCIATION  
111-113 First Street  
Elizabeth, 1, N. J.,  
Holder of Plenary Retail Consumption License C-257, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth.

CONCLUSIONS  
AND ORDER

Joseph J. Turek, Esq., Attorney for Defendant-Licensee.  
Gaylord R. Hawkins, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee has entered a plea of non vult to the following charge:

"On or about March 17, 1944, you possessed illicit alcoholic beverages at your licensed premises, viz., two 4/5th quart bottles labeled 'Old Crow Brand Straight Rye Whiskey 86.8 Proof', which bottles contained alcoholic beverages not genuine as labeled; such possession being in violation of R. S. 33:1-50."

On March 17, 1944 investigators of the Department of Alcoholic Beverage Control, while making a retail inspection of the licensed premises, found two bottles, the contents of which apparently did not coincide with the labels thereon. These bottles, together with an additional bottle for comparative purposes, were seized by the investigators. Analysis by the Department's chemist disclosed that the seized bottles contained blended whiskey artificially colored and not straight whiskey (having no artificial coloring) as stated on the labels.

Officials of the association denied responsibility and stated that the club premises were conducted by a manager who had sole charge thereof. They further state that, since the discovery of the violation, the resignation of the manager has been requested and accepted, and that a new manager is now in charge.

While this may be the fact, the licensee is strictly responsible for "refills" found on the premises. Re Baratta, Bulletin 596, Item 11. An association can no more evade this responsibility than an individual licensee.

The licensee's record is otherwise clear, and in the absence of any aggravating circumstances I shall suspend the license for a minimum period of ten days.

Accordingly, it is, on this 26th day of May, 1944,

ORDERED, that Plenary Retail Consumption License C-257, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth to Polish National Home Association for premises 111-113 First Street, Elizabeth, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A. M. June 5, 1944 and terminating at 2:00 A.M. June 15, 1944.

ALFRED E. DRISCOLL  
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A MINOR, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - 15 DAYS' SUSPENSION, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )  
MARIE, CARL & GEORGE LENZ )  
T/a LENZ BROS. )  
318-320 North Trenton Avenue )  
Atlantic City, N. J., )  
Holder of State Beverage Distributor's License SBD-191, issued by the State Commissioner of Alcoholic Beverage Control. )  
----- )

CONCLUSIONS  
AND ORDER

Marie, Carl & George Lenz, Pro Se.  
Edward F. Hodges, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensees plead non vult to having sold and delivered alcoholic beverages to a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

On the evening of April 26, 1944, the minor in question, who was seventeen years of age, went to the licensed premises and asked for a quarter barrel of beer and some coils. One of the partners, Marie Lenz, inquired if he was of age and the minor showed her what purported to be his registration card. What the minor actually exhibited was the registration card of a friend of his which indicated that its owner was born in 1925. Nevertheless, Marie Lenz chose to rely upon this and asked the minor to sign an ordinary sales slip, as she states, "to prove he was twenty-one years of age." The minor signed his own name and not the name which appeared on the registration card. The licensee relies upon this in mitigation of the offense.

This constitutes no defense. If Marie Lenz had examined the registration card she would have discovered that the registrant lacked over two years of being twenty-one years of age, and if she had compared names after the minor had signed the sales slip she would have noticed the difference in the names and the sale would never have been made. I have pointed out in Re Wooby, Bulletin 606, Item 6, the procedure the licensee must follow to successfully defend himself against the charge of selling to minors. In this case it appears to me that the licensee simply went through the motions of making an inquiry and was content with whatever answer she received provided it was that the purchaser was over twenty-one years of age.

The licensee has no previous record. However, the minor in question is seventeen years of age. To show the serious consequences that may follow a violation of this character, it is to be noted that, without defendants' knowledge, the beer was later consumed by a group of minors, some of whom became intoxicated. In view of all the facts, I shall suspend the license for fifteen days, less five days for the plea, making a net suspension of ten days.

Accordingly, it is, on this 26th day of May, 1944,

ORDERED, that State Beverage Distributor's License SBD-191, issued by the State Commissioner of Alcoholic Beverage Control to Marie, Carl & George Lenz, t/a Lenz Bros., for premises 318-320 North Trenton Avenue, Atlantic City, be and the same is hereby suspended for a period of ten (10) days, commencing at 12:01 A.M. June 5, 1944, and terminating at 12:01 A. M. June 15, 1944.

ALFRED E. DRISCOLL  
Commissioner.

5. APPELLATE DECISIONS - PERONE v. ATLANTIC CITY.

FRANK T. PERONE,	)	
	)	
Appellant,	)	
	)	
-vs-	)	ON APPEAL
	)	CONCLUSIONS AND ORDER
BOARD OF COMMISSIONERS OF THE	)	
CITY OF ATLANTIC CITY,	)	
	)	
Respondent.	)	
-----	)	

David R. Brone, Esq., Attorney for Appellant.  
Samuel Backer, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the action of respondent suspending appellant's license for a period of ten days. The suspension was imposed after respondent had found appellant guilty of charges alleging "that on February 16, 1944, and on divers days prior and subsequent thereto, he did sell, serve and deliver alcoholic beverages to persons under the age of twenty-one years and, further, he did sell, serve, deliver and allow, permit and suffer the service and delivery of alcoholic beverages to persons actually or apparently intoxicated, and did allow, permit and suffer the consumption of alcoholic beverages by such persons upon the premises aforesaid."

At the hearing held herein, George F. Walley, of full age, testified that he entered appellant's premises with Helen ---, a minor, on the evening of February 15, 1944, and that they took seats at a booth in the rear room of the licensed premises. Walley says that he went to the bar in the front room of the premises and ordered two whiskeys and two beers, which were served at the booth by the bartender; that thereafter he ordered a second round of similar drinks which were served at the booth by a janitor, and that he himself carried a third round of similar drinks from the bar to the booth. Walley further testified that, after he and Helen had consumed the three rounds of drinks, the bartender came to the booth and said that he thought Helen had had enough, and that thereafter Walley purchased one more round of similar drinks at the bar, which he carried to the booth where they were consumed by Helen and himself.

Helen --- testified that she was nineteen years of age and that she was born on June 18, 1924. There is no other evidence in the case as to her age. A minor, however, is a qualified witness to testify as to her own age. See Wigmore on Evidence, Section 667; State v. Huggins, 83 N. J. L. 43; Re Abrams, Bulletin 562, Item 8. Helen testified that, while she was seated at the booth with Walley, she drank a beer and whiskey which had been served by a man, but stated, "I don't exactly remember what he looked like." She testified that thereafter she drank three or four whiskeys and beers in appellant's premises, but says that she was not intoxicated. The evidence shows that she and Walley left appellant's premises shortly after 11:00 P. M. and walked about seven blocks to another licensed place where they purchased additional drinks of alcoholic beverages.

On behalf of appellant, Abe Hoffman, the bartender, testified that Walley purchased two whiskeys and two beers at the bar and carried the drinks to the booth in the rear room. Hoffman testified

that he followed Walley to the booth and saw the girl leaning on Walley's shoulder; that he asked if the girl was going to consume the drink; that Walley replied, "I am going to drink it", and that Walley thereupon consumed all the drinks. The bartender also testified that the janitor never served any drinks and that the girl drank nothing. The licensee testified that he entered the rear room about 9:10 or 9:15 P. M. and that he told Walley, "You will have to take this young lady out"; that Walley finished the drinks, and that the girl had nothing to drink.

After considering all the evidence, I am satisfied that, on the evening in question, alcoholic beverages were served to the minor girl, and that she was permitted to consume alcoholic beverages on the licensed premises. I therefore affirm the respondent's finding of guilt in so far as it relates to the sale and service of alcoholic beverages to the minor and the consumption of the same by the minor on the licensed premises.

There is little, if any, evidence that alcoholic beverages were served to any person who was actually or apparently intoxicated, or that any person in that condition was permitted to consume alcoholic beverages on the appellant's licensed premises. Hence I must reverse the finding of guilt as to that portion of the charges.

The ten-day suspension imposed by respondent would appear to be wholly inadequate if all the charges were sustained. The recommended suspension for the sale and service of alcoholic beverages to minors, in contested cases, and in the absence of aggravating circumstances or a prior record, is ten days. The suspension imposed is fully justified by the affirmance of the finding of guilt as to that portion of the charges. Hence I shall affirm the suspension imposed in this case.

Accordingly, it is, on this 26th day of May, 1944,

ORDERED, that the action of respondent, as modified herein, is affirmed; and it is further

ORDERED, that the ten-day suspension by respondent of appellant's Plenary Retail Consumption License C-216, for premises located at 716-718-720 Atlantic Avenue, Atlantic City, which suspension was held in abeyance pending disposition of the instant appeal, is hereby restored, to commence at 12:01 A. M. June 5, 1944, and to terminate at 12:01 A. M. June 15, 1944.

ALFRED E. DRISCOLL  
Commissioner.

6. APPELLATE DECISIONS - DANKER v. SCOTCH PLAINS

AUGUST EDWIN DANKER, )  
trading as RADLEY LODGE, )  
Appellant, )  
-vs- )  
TOWNSHIP COMMITTEE OF THE )  
TOWNSHIP OF SCOTCH PLAINS, )  
Respondent )

ON APPEAL  
CONCLUSIONS AND ORDER

Henry C. Berg, Esq., Attorney for Appellant.  
Harry E. Bernstein, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant herein appeals from a fifty-day suspension of Plenary Retail Consumption License C-4 for premises on Radley Road, Scotch Plains. The suspension was imposed by respondent after appellant had been found guilty of having sold, served or delivered to, and having allowed, permitted or suffered the consumption of alcoholic beverages by five minors, in violation of R. S. 33:1-77, Rule 1 of State Regulations No. 20 and the provisions of a municipal ordinance.

Upon the filing of this appeal, the suspension was stayed pending the hearing and until further order of the Commissioner.  
R. S. 33:1-31.

William ---, sixteen years of age, testified that, on the evening of June 18, 1943, in the company of Wayne ---, also sixteen years of age, and Richard ---, fifteen years of age, he visited the tavern operated by appellant. He stated that he and his companions were driven to the licensed premises in an automobile by one Beryle ---, arriving there at about 10:30 P. M. Beryle --- did not go into the establishment. William --- further testified that the three youths entered the rear door, proceeded through the barroom to the adjoining room in the front part of the building, sat at a table visible from the barroom and shortly thereafter moved the table to a place on the other side of the room close to the partition which separates the anteroom from the barroom. William --- said that on the way to the bar with Wayne ---, he spoke to Mary Jane ---, who was seated at a table in the barroom. William --- testified that Wayne --- purchased three glasses of beer from appellant and that thereafter, on two separate occasions, Wayne --- purchased three additional glasses of beer from appellant and that thereafter, on two separate occasions, Wayne --- purchased three additional glasses of beer at the bar, brought them to the front room where the youths drank the beer. After the third round of drinks, the youths left the tavern and shortly thereafter were again met by Beryle ---. Subsequently, the automobile in which they were riding was stopped by a policeman for an infraction of the motor vehicle law.

Mary Jane ---, age nineteen years, corroborated the testimony of William --- that she spoke to him on the evening of June 18, 1943 in the tavern and testified that she had beer to drink that evening as she had had on similar occasions. Wayne --- and Richard --- substantiated, in substance, the testimony of William ---. Beryle --- testified that he took the three youths to the tavern in his friend's car and called

for them later in the evening. All four boys also were in agreement that before going to the appellant's place of business, an adult had purchased several quart bottles of beer for them from a licensee in an adjoining municipality.

The testimony of Allen ---, seventeen years of age, discloses that he and Thomas ---, sixteen years of age, visited the tavern of appellant, on June 18, 1943, arriving there about 8:00 P. M. and leaving the premises at approximately 9:30 P. M. Allen --- said that each of them had two glasses of whiskey and one glass of beer while seated at a table in the anteroom. He stated that August Danker was the bartender and that the purchases were made from Mary Reinecki, the waitress. Allen --- said that he did not know the other youths nor did he remember observing Mary Jane --- in the premises during the time that he was there.

Thomas --- corroborated the statements made by Allen --- with respect to obtaining alcoholic beverages at appellant's tavern with the exception that he did not remember the exact date in June 1943 when he was in the licensed premises. Probably because this witness could not fix the exact date the charge of selling alcoholic beverages to him was dismissed by respondent.

The appellant testified that, due to the illness of his father, he had left the tavern shortly after 9:00 P. M. in charge of his brother, Harry, and did not return to the premises until midnight. His testimony regarding his absence from the tavern between the hours of 9:00 P. M. and 12:00 M. was corroborated by several witnesses, among whom were F. Harley Williams, Joseph L. Child and John A. Reid, who stated that they were in the tavern on the night of June 18, 1943.

F. Harley Williams testified that, during the appellant's absence, Harry Danker tended bar. He stated that he sat at the bar all evening and did not observe any of the minors in the premises that night. He recollected being there on June 18, 1943 as he had attended a "dinner party" and had gone to Danker's thereafter, arriving at the tavern about 8:00 P. M.

Joseph L. Child testified that he attended a birthday party given by a friend and that the celebrants thereof sat at a table in the anteroom adjoining the room in which the bar was located. He said that he did not see any of the minors in the room wherein he sat, nor did he see any minors in the barroom on occasions when he went to the bar to obtain drinks for the party.

John A. Reid stated that he sat at the bar but did not see any of the minors in the instant case that evening. The reason given by Mr. Reid for remembering the particular night was that he left on a vacation the following day.

Harry Danker testified that he relieved his brother August, the appellant herein, about 9:00 P. M. so that the latter could visit their father, who was seriously ill. August did not return until midnight, according to Harry Danker. This was substantiated by the appellant. Florence A. Danker, mother of the appellant, testified that he was at her home from 9:20 P. M. until 11:45 P. M.

Roy Sickles testified that he arrived at Danker's tavern about 9:00 P. M. on June 18, 1943 and sat in the room adjoining the barroom and remained there until 2:00 A. M. the following morning. Mr. Sickles said that he did not see any minors in the tavern that evening. When questioned regarding the hour that appellant left the tavern, he answered, "I imagine between 10:30 and 11:00 o'clock."

After having carefully studied all of the conflicting testimony presented on the appeal, I have reached the conclusion that alcoholic beverages were sold on the evening of June 18, 1943 to one or more minors and that the five minors were permitted to consume alcoholic beverages on the licensed premises, in violation of Rule 1 of State Regulations No. 20 and R. S. 33:1-77. Allen --- stated that he was in appellant's place of business and consumed alcoholic beverages obtained from the waitress. William --- and his two companions declared that they drank alcoholic beverages obtained by Wayne --- from the licensee at the bar. Mary Jane --- stated that, while seated at a table in the barroom, she drank alcoholic beverages obtained for her at the bar by a male companion from the licensee. The disclosure by William and his companion that they had been at appellant's licensed premises and had bought and consumed alcoholic beverages was made to the public shortly after their apprehension on the evening of June 18, 1943 or early on the following morning. I cannot conceive of any reason why these boys would deliberately make a false statement to the police authorities involving the appellant if they were not in the licensed premises that night. It seems incredible that all of the minors, several of whom were not acquainted with one another, would testify to being in the licensed premises on June 18, 1943 and consuming alcoholic beverages while there if it were not so. In addition thereto, Beryle testified that he took his three companions to the appellant's place of business and returned for them later in the evening. Several of the appellant's witnesses admitted that they did not see all the persons who frequented the place that evening. The appellant may have left the licensed premises at some time during the evening. As to the time of his departure, Roy Sickles said that it was between 10:30 and 11:00 P. M. The three youths testified that they arrived some time around 10:30 P. M. and Allen --- testified that he arrived there about 8:00 P. M. Even allowing for discrepancies in the testimony by the respondent's witness, Roy Sickles, and in the testimony of the boys relative to the time of departure of appellant and the time the boys entered the tavern, respectively, it is reasonably certain that the appellant was there during part of the time that the boys were in the premises.

After carefully considering all the testimony, I am satisfied that the respondent was justified in the conclusion as to appellant's guilt. Hence, the finding of guilt is affirmed.

The only point remaining is the question of the length of suspension which appellant argues is excessive. The suspension imposed in a local disciplinary proceeding rests, in the first instance, within the sound discretion of the local issuing authority. The power of the Commissioner to reduce a suspension on appeal is confined to those cases where the suspension is manifestly unreasonable. Dzieman v. Paterson, Bulletin 233, Item 10.

It is conceded that the suspension imposed is extreme but the violations were serious. Sales of intoxicating liquor to youngsters of sixteen and seventeen years of age cannot be condoned. The fact that this is the first time in the six years that appellant has held a license that any charges have apparently been brought against him for violation of the Alcoholic Beverage Law, is a matter which might properly have been considered by the respondent in imposing the suspension. The issuing authority, in fixing the suspension, was likewise free to consider the fact that appellant has made some effort to prevent sales to minors by posting signs in the premises and requiring persons who appear to be under age to sign written representations as to their ages. It is to be regretted that he did not follow the procedure outlined in R. S. 33:1-77 at all times.

In view of the number of minors involved and their respective ages, the suspension imposed, although severe, does not afford a basis for reversal or even modification on this appeal. The plea for mitigation should be made, if at all, to respondent, which may grant relief in the event that members of the local issuing authority determine that such action is advisable. In Re Bischoff, Bulletin 53, Item 5, the Commissioner pointed out that it is within the jurisdiction of the local issuing authority to modify a penalty previously imposed where the facts warrant it.

The present appeal will be dismissed, and the fifty-day suspension will be reinstated. Since the present licensing period will expire prior to the termination of the fifty days, appellant's present license will be suspended for the balance of its term and I shall direct that in the absence of any modification of the suspension by the local issuing authority, any renewal license, or any other license issued to any other person for the premises in question for the fiscal year 1944-45 shall remain subject to this suspension until the full fifty days have expired.

Accordingly, it is, on this 26th day of May, 1944,

ORDERED, that the above appeal be and the same is hereby dismissed; and it is further

ORDERED, that the fifty days' suspension by respondent of appellant's Plenary Retail Consumption License C-4 for premises on Radley Road, Scotch Plains, which suspension was held in abeyance pending disposition of the instant appeal, is hereby restored, to commence at 2:00 A. M. June 5, 1944, and to continue in effect until the expiration of the present license at midnight on June 30, 1944; and it is further

ORDERED, that any further license issued for the fiscal year 1944-45 for the premises in question to appellant, or to any other person, shall be subject to said suspension until 2:00 A. M. July 25, 1944.

ALFRED E. DRISCOLL  
Commissioner.

7. APPELLATE DECISIONS - BEEBE v. GLASSBORO.

ETHEL S. BEEBE, Administratrix  
of Estate of LeRoy Beebe,  
deceased, )  
) )  
Appellant, )  
) )  
- vs - )  
) )  
BOROUGH COUNCIL OF THE BOROUGH  
OF GLASSBORO, )  
) )  
Respondent )

ON APPEAL  
CONCLUSIONS AND ORDER

Joseph R. Applebaum, Esq. and Frank Sahl, Esq., Attorneys for  
Appellant.  
Vernon H. Fidler, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of renewal of a plenary retail consumption license for premises at 19-21 North Main Street, Borough of Glassboro.

LeRoy Beebe, who had held a plenary retail consumption license for the premises in question during the previous nine years, died on December 24, 1942. A dispute arose as to the right to administer the assets of his estate. In proceedings instituted in the Orphans Court of Gloucester County it was determined that Ethel S. Beebe was the widow of LeRoy Beebe. On May 18, 1943 she qualified as administratrix of his estate. On May 25, 1943 respondent extended the license for the balance of its term to Ethel S. Beebe as administratrix of the estate of LeRoy Beebe, deceased. R.S. 33:1-26. On June 22, 1943 respondent denied appellant's application for a renewal of the license in her representative capacity. Hence this appeal.

It is admitted that when the application was denied no reasons for the denial were given. In common fairness to applicants, municipal issuing authorities, when denying applications for licenses or the renewal thereof, should at that time state their reasons for the denial of the application. Giraldi v. Bordentown, Bulletin 577, Item 3.

The answer filed by respondent sets forth numerous alleged reasons for the denial. These reasons may be summarized as follows: (1) Council has no authority to renew a license where the licensee is deceased; (2) it was within the discretion of Council to refuse a renewal where it felt that the administratrix had had ample time in which to liquidate the decedent's estate; (3) the administratrix is an alien and personally unfit; (4) the application contained false statements; and (5) residents of the Borough protested against renewal of the license.

As to (1): Upon the death of a licensee, the issuing authority may, in its discretion, extend the license for a limited time not exceeding its term. R. S. 33:1-26. It has been heretofore decided, however, that, if an executor or administrator obtains an extension of the license for the balance of its term, he may, in performance of his functions as personal representative of the decedent's estate, apply for a renewal of the license for the next

fiscal year. Re Deighan, Bulletin 355, Item 9; Warr v. Wyckoff, Bulletin 581, Item 8; Muller v. Dumont, Bulletin 587, Item 6. If respondent denied the application because it believed that it lacked the power to renew the license in the name of the administratrix, then it is clear that respondent was mistaken in its interpretation of the provisions of the Alcoholic Beverage Law.

As to (2): Granting that the power to renew exists, an issuing authority may nevertheless, in the exercise of sound discretion, refuse to renew any license. The question, therefore, remains as to whether or not, under the circumstances of this case, respondent abused its discretionary powers. The administratrix qualified on May 18, 1943. The estate had not been settled at the time the hearing was held herein. It may well be that, after a sufficient period of time has elapsed, a local issuing authority would be fully justified in refusing to renew a license in the name of the representative of an estate. However, I conclude that respondent herein acted unreasonably in refusing to renew the license scarcely six weeks after the administratrix qualified. Having received an extension of the license, appellant should have a reasonable opportunity to close the estate.

As to (3): It has been determined that a license may be extended to an alien administrator. In Re Begley, Bulletin 79, Item 5, the Commissioner said:

"The Legislature provided for authority to extend a license to an administrator in order to protect the estate of the licensee during the period immediately following his death. This protection would in part be taken away if the administrator were required to possess qualifications in addition to those necessary under the statutes governing the issuance of letters of administration."

Since Ethel S. Beebe possesses the qualifications necessary under the statutes governing the issuance of letters of administration, it is unreasonable to deny her an opportunity to settle the estate merely because she is an alien.

Ethel S. Beebe admits that in 1921 she was fined \$300.00 after she pleaded non vult to an indictment charging her with possession of alcoholic beverages, and that in 1929 she was fined \$250.00 after she pleaded non vult to an indictment charging her with possession of alcoholic beverages. From the record presented it does not appear that either crime involved moral turpitude. Despite these convictions, respondent extended the license to her in her representative capacity on May 25, 1943. The action of respondent, a few weeks later, in denying renewal of the license to her in her representative capacity, was unreasonable.

As to (4): It appears from the application that the information contained therein refers to the decedent, LeRoy Beebe, and that it does not refer to Ethel S. Beebe, the administratrix of his estate. The attorney who prepared the application, but who did not appear for her in this case, testified that he was of the opinion that the information was required as to LeRoy Beebe, the deceased, and not as to Ethel S. Beebe, the administratrix. He based his opinion upon the fact that the license was sought for the benefit of the estate. I am satisfied from an examination of the application

and the evidence that there was no intent to deceive respondent. The error clearly appears on the face of the application. Hence the appellant will be given an opportunity to amend the application so as to set forth the correct information and to re-execute the application after it has been so amended.

As to (5): Six letters containing general objections to renewal of the license were received by respondent. According to the minutes of the meeting held on June 22, 1943, one objector personally appeared at the meeting and "said he was opposed to granting this license." So far as appears from the record, no evidence that the premises had been improperly conducted by decedent or appellant was presented at the hearing below. No such evidence was presented at the hearing of the appeal.

I conclude that the action of respondent in denying the renewal of a license to the applicant was unreasonable.

The result reached herein does not mean that Ethel S. Beebe, who apparently is entitled to all the assets of the estate after payment of debts, may continue to hold this license indefinitely in her representative capacity. The license may not be held by appellant in a representative capacity beyond June 30, 1944. By that date she will have had a fair opportunity to settle the decedent's estate.

From the record presented, it appears that Ethel S. Beebe may be ineligible to hold a license as an individual because of the fact that she is an alien, and there may be some question as to whether or not she is a fit person to hold a license as an individual because of the convictions set forth above. These questions may be determined by respondent if an application is filed to transfer the license to Ethel S. Beebe individually.

Accordingly, it is, on this 26th day of May, 1944,

ORDERED, that the action of respondent, in denying appellant's renewal application, be and the same is hereby reversed; and it is further

ORDERED, that respondent issue a plenary retail consumption license to Ethel S. Beebe, administratrix of the estate of LeRoy Beebe, deceased, as soon as the application is amended and re-executed by appellant as hereinabove set forth.

ALFRED E. DRISCOLL  
Commissioner.

8. ACTIVITY REPORT FOR MAY, 1944

To: Alfred E. Driscoll, Commissioner

<u>ARRESTS:</u>	Licensees and employees - - - - -	7	Bootleggers - - - - -	12
	Total number of persons arrested- - - - -			19
<u>SEIZURES:</u>	Still - 1 to 50 gallons daily capacity - - - - -			3
	50 gallons and more daily capacity- - - - -			1
	Total number of stills seized - - - - -			4
	Mash - gallons - - - - -			780
	Motor vehicles - Trucks - - - - -			0
	Passenger cars - - - - -			3
	Total number of motor vehicles seized - - - - -			3
	Beverage alcohol - gallons- - - - -			10
	Brewed malt alcoholic beverages (beer, ale, etc.) - gallons - - - - -			45
	Wine - gallons- - - - -			69
	Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons - - - - -			15
<u>RETAIL LICENSEES:</u>	Total number of premises inspected- - - - -			1,542
	Total number of bottles gauged- - - - -			10,184
	Total number of premises where violations were found- - - - -			54
	Total number of violations found- - - - -			66
	Type of violations found:			
	Illicit (bootleg) liquor - - - - -	5	Improper beer tap markers - - - - -	2
	Gambling devices - - - - -	1	Stock disposal permits necessary- - - - -	4
	Prohibited signs - - - - -	0	No sign denoting legal sale	
	Unqualified employees- - - - -	30	hours - off-premises consumption- - - - -	4
	"Fronts" (concealed ownership)- - - - -	2	Other types of violations - - - - -	18
<u>MILITARY AREA PATROL INSPECTIONS:</u>				591
<u>STATE LICENSEES:</u>	Premises inspected- - - - -			17
	License applications investigated - - - - -			84
<u>COMPLAINTS:</u>	Investigated, reviewed and closed - - - - -			395
	Investigation assigned, not yet completed - - - - -			336
<u>LABORATORY:</u>	Analyses made - - - - -			120
	"Shake-up" cases (alcohol, water and artificial coloring) - - - - -			5
	Liquor found to be not genuine as labeled - - - - -			5
<u>IDENTIFICATION BUREAU:</u>	Criminal fingerprint identifications made - - - - -			26
	Persons fingerprinted for non-criminal purposes - - - - -			188
	Identification contacts with other enforcement agencies - - - - -			258
	Motor vehicle identifications via N. J. State Police Teletype - - - - -			30
<u>DISCIPLINARY PROCEEDINGS:</u>	Cases transmitted to municipalities - - - - -			26
	Cases instituted at Department- - - - -			19
<u>HEARINGS HELD AT DEPARTMENT:</u>	Total number of hearings held - - - - -			36
	Appeals - - - - -	6	Eligibility - - - - -	7
	Disciplinary proceedings- - - - -	19	Seizures- - - - -	4
<u>PERMITS ISSUED:</u>	Total number of permits issued- - - - -			787
	Unqualified employees - - - - -			179
	Solicitors- - - - -			42
	Social affairs- - - - -			147
	Home manufacture of wine- - - - -			1
	Disposal of alcoholic beverages - - - - -			77
	Miscellaneous permits - - - - -			341

Respectfully submitted,  
Sydney B. White  
Chief Inspector.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO WOMEN OVER THE BAR, IN VIOLATION OF LOCAL ORDINANCE - PREVIOUS RECORD - 7 DAYS' SUSPENSION, LESS 2 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

VIOLET GRIP )  
T/a ARENA CAFE )  
3225 Mt. Ephraim Avenue )  
Camden, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-156, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden. )

Mitchell H. Cohen, Esq., Attorney for Defendant-Licensee.  
Gaylord R. Hawkins, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleads non vult to charge alleging that she served alcoholic beverages to women directly over a bar on her licensed premises, in violation of a local ordinance.

On the night of April 29, 1944, two investigators of the Department of Alcoholic Beverage Control, while in defendant's licensed premises, observed service of alcoholic beverages being made to several women directly over the bar.

In the absence of a previous adjudicated record, a violation of this character would warrant a five-day suspension. Cf. Re Hencinski, Bulletin 546, Item 3.

The license of defendant herein, however, was suspended for fifteen days, commencing February 8, 1943, as a result of her plea of guilty to sale of alcoholic beverages during prohibited hours and for failure to arrange the curtains on windows and doors to permit exposure of interior to public view, in violation of a local ordinance. Re Grip, Bulletin 551, Item 10.

Under the circumstances, I shall suspend the license for seven days, with a remission of two days for the plea of non vult, or a net suspension of the license for a period of five days.

Accordingly, it is, on this 31st day of May, 1944,

ORDERED, that Plenary Retail Consumption License C-156, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Violet Grip, t/a Arena Cafe, for premises 3225 Mt. Ephraim Avenue, Camden, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 A. M. June 5, 1944, and terminating at 2:00 A. M. June 10, 1944.

*Alfred E. Gussell*  
Commissioner