Mr. MacIntosh

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

BULLETIN 441 JANUARY 25, 1941.

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

BULLETIN 441 JANUARY 25, 1941.

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In the Matter of the Seizure on November 12, 1940, of a Ford Station Wagon and a quantity of alcoholic beverages and empty bottles found therein, in the vicinity of Broad and Commerce Streets, in the City of Newark, County of Essex and State of New Jersey.	Case No. 5905 ON HEARING CONCLUSIONS AND ORDER

Abraham Merin, Esq., Attorney for State Department of Alcoholic Beverage Control.
Samuel S. Ferster, Esq., Attorney for Walter F. Jung.

On November 12, 1940 investigators of this Department observed a Ford station wagon, loaded with six cases of beer and several cases of empties, parked in front of a licensed restaurant in Newark. Since the station wagon bore no liquor transportation insignia, both truck and beer were seized as unlawful property.

Thereafter Walter F. Jung, the registered owner of the vehicle and the holder of State Beverage Distributor's License No. SBD-157 for premises 40 Goble Street, Newark, as principal, and Maryland Casualty Co. as surety, executed a bond in the penal sum of Seven Hundred Dollars ($700.00) and reclaimed the station wagon and the beer.

At the hearing Jung urged that he be relieved of the forfeiture of the station wagon and beer because he had not consciously intended to violate the law.

Jung testified that he has been operating as a State Beverage Distributor since July 1939; that until June 1940 deliveries to his customers were made through duly licensed transportation companies; that on June 13, 1940 he leased a truck, for which he obtained transportation insignia, and used said truck for delivery purposes until October 14, 1940, when the transportation insignia for the leased truck was cancelled by this Department because the control over the vehicle vested in Jung by the lease was not sufficient under State Regulations No. 16, Rule 5; that from October 14, 1940 until November 8, 1940 a few deliveries were made in his wife's unlicensed automobile; that from November 9, 1940 to November 12, 1940, the date of the seizure, deliveries were made in Jung's newly purchased, but unlicensed, station wagon.

In explanation of his failure to obtain transportation insignia for his wife's car and his own station wagon, Jung testified that his business is small; that, when cancellation of the transportation insignia prevented further use of the leased truck,

he was financially unable to purchase, immediately, a suitable truck; that, during the period he was looking around for a truck he could afford to buy, he had to maintain deliveries to his customers in order not to lose their trade; that he used his wife's car for that purpose, without taking steps to obtain insignia for it, because he thought that he would be able to purchase a truck within a very short time; that he was unable to obtain one until the evening of Friday, November 8, 1940; that he intended to obtain insignia for the station wagon the very day of the seizure and would have gotten it sooner had it not been for the fact that the week-end and the holiday of November 11, 1940 had intervened.

In view of the foregoing, I am convinced that, while Jung was negligent, there was no deliberate attempt or intent on his part to violate the law. His record is otherwise clear. The case is not one of transporting "bootleg" liquor. A transportation insignia for the station wagon could have been obtained free on proper application to this Department.

The laws and regulations respecting transportation must, however, be enforced and licensees taught to comply therewith.

Under the circumstances, Walter F. Jung may be relieved of the forfeiture of the station wagon and the beer, provided that on or before January 25, 1941 he pays the costs involved in the seizure thereof and applies for and completes all steps necessary to obtain a special permit retroactively validating the illegal transportation in his wife's automobile and his station wagon. Such costs of seizure and storage, together with a punitive fee of Twenty-five Dollars ($25.00) for the said permit, will be adequate penalty. Cf. Seizure of a Chevrolet Truck, Bulletin 336, Item 2; Re Seizure Case No. 5572, Bulletin 394, Item 16.

Accordingly, it is ORDERED that if, on or before Saturday, January 25, 1941, Walter F. Jung pays the costs of seizure and storage in this case and applies for and obtains a special validating permit for the illegal transportation, both Walter F. Jung, as principal, and Maryland Casualty Co. as surety, will be released from liability to the Acting Commissioner of Alcoholic Beverage Control (except as to their indemnification of the Acting Commissioner against the suits or claims of third persons) on their joint bond herein of November 13, 1940.

E. W. GARRETT,
Acting Commissioner.

Dated: January 10, 1941.

2. DISCIPLINARY PROCEEDINGS - BOOK-MAKING AND GAMBLING - SECOND DISSIMILAR OFFENSE - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against JOSEPH STEINREICH, 278 Market St., Newark, N. J., Holder of Plenary Retail Consumption License C-450 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	CONCLUSIONS AND ORDER

Rothbard and Schutzman, Esqs., by Saul C. Schutzman, Esq., Attorneys for Defendant-Licensee.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to a charge that he permitted book-making and gambling on the licensed premises by accepting bets on horses, in violation of Rule 7 of State Regulations No. 20.

This matter was investigated by officers of the Newark Police. The police file transmitted to this Department discloses that on December 13, 1940 two detectives entered the licensed premises at about 4:50 P.M. and found a patron seated at the bar with an Armstrong Racing Sheet and a slip of paper with names of horses written thereon before him. When questioned, the patron told the officers that he had been placing bets on horses with the licensee and that he had just placed a $3.00 bet with the proprietor. The licensee was brought to the office of Police Commissioner Kaas, where he signed the following statement:

> "I have been operating a tavern located at 278 Market Street for the past seven years. For the past six or eight months business has not been very good and I decided to take a few bets on the horse races, this I have been doing for the past six or eight months. Today I took about twenty-five dollars in bets, and the money I took in bets I put alongside of the cash register. On an average, I would take about fifty to sixty dollars in bets a day. Today about 4:30 P.M., a young man.....had placed a three dollar bet on the horses with me just prior to when the police came in....."

In connection with his guilty plea, the licensee represents that "he realizes now, of course, he can not under any circumstances engage in this activity...."

As was stated in Re Palmer and Peterson, Bulletin 321, Item 10:

> "Horses and all other forms of gambling and of bookmaking must be driven out of licensed premises."

Poor business is no excuse for taking on book-making as a side line. Licensees will learn that their business will be even poorer when they are closed temporarily for violations.

The minimum penalty for this violation was fixed in Re Palmer and Peterson, supra, at ten days. However, the Department files disclose that the subject's license was suspended for five days, effective January 3, 1938, for Election Day sales in violation of Rule 2 of State Regulations No. 20. In view of the previous record of this licensee, the penalty will be fifteen days.

By entering a guilty plea in ample time before the date set for hearing, the Department has been saved the time and expense of proving its case, for which five days of the total penalty will be remitted.

Accordingly, it is, on this 13th day of January, 1941,

ORDERED, that Plenary Retail Consumption License C-430, heretofore issued to Joseph Steinreich by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of ten (10) days, effective January 15, 1941, at 3:00 A.M.

E. W. GARRETT,
Acting Commissioner.

3. REGULATIONS NO. 20, RULE 23 - ACCEPTANCE OF FEDERAL FOOD STAMPS IN PAYMENT FOR ALCOHOLIC BEVERAGES PROHIBITED.

The United States Department of Agriculture, through its local representatives, has requested the cooperation of this Department in making effective its prohibition of the exchange of alcoholic beverages for the food stamps of the Surplus Marketing Administration of that Department. We comply gladly by publishing the following Rule:

RULE 23 OF REGULATIONS NO. 20

"No licensee shall, directly or indirectly, accept any food stamps, either orange or blue stamps, issued by the Surplus Marketing Administration of the United States Department of Agriculture, in full or partial payment for or in exchange for any alcoholic beverage."

Violation of the above Rule may be cause for suspension or revocation of the license.

It is promulgated and effective immediately.

E. W. GARRETT,
Acting Commissioner.

Dated: January 14, 1941.

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

In the Matter of Disciplinary Proceedings against

JOSEPH LEVINE,
591 Orange St.,
Newark, N. J.,

Holder of Plenary Retail Distribution License No. D-40, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Joseph Levine, Pro Se.
Robert R. Hendricks, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to a charge of selling alcoholic beverages at less than the Fair Trade price, in violation of State Regulations No. 30, Rule 6.

Reports of the Department agents show that on December 10, 1940 the defendant-licensee sold a pint bottle of Wilson "That's All" Whiskey to an investigator for the price of $1.10, and that on December 15, 1940 the wife of the defendant licensee sold a quart bottle of the same product to the same investigator for the price of $2.20. The minimum consumer price at which pint and quart bottles of this whiskey could be sold lawfully, at that time, was $1.35 and $2.59, respectively. Bulletin 424.

The minimum penalty for sale below Fair Trade price is ten days.

The instant offense is not the defendant-licensee's first conviction of record. In 1938 he pleaded guilty to charges of selling an alcoholic beverage below Fair Trade price, in violation of State Regulations No. 30, Rule 6, and displaying an oversized price sign in his show window, in violation of State Regulations No. 21, Rule 3, and his license was suspended for ten days. Re Levine, Bulletin 287, Item 16; Bulletin 362, Item 1. Since the instant offense involves a second similar violation, the original penalty of ten days will be doubled.

By entry of the plea, however, the Department has been saved the time and expense of proving its case. Five days of the determined penalty will, therefore, be remitted.

Accordingly, it is, on this 15th day of January, 1941,

ORDERED, that Plenary Retail Distribution License D-40, heretofore issued to Joseph Levine by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of fifteen (15) days, effective January 20, 1941, at 3:00 A.M.

E. W. GARRETT,
Acting Commissioner.

5. FAIR TRADE - WRIT OF CERTIORARI TO REVIEW REVOCATION OF LICENSE, DENIED.

Supreme Court Justice Case on January 14, 1941 denied the application of C. I. Tarlow, Inc., of Cranford, for a writ of certiorari to review the recent revocation of its license for violation of the State Fair Trade Regulations.

In the disciplinary proceedings conducted at this Department reported in Re C. I. Tarlow, Inc., Bulletin 436, Item 1, the licensee had pleaded guilty but contended both in those proceedings and in its application for the writ of certiorari, that it should be punished only by a five day suspension of its license because this was its first offense.

The salutary principle of Fair Trade, designed to prevent the excessive and undue consumption of alcoholic beverages which follows naturally in the wake of unrestrained liquor price-cutting, has once more been sustained.

E. W. GARRETT,
Acting Commissioner.

6. APPELLATE DECISIONS - PELOS v. SPRINGFIELD.

NOISE AND DISTURBANCE - SUSPENSION BY MUNICIPALITY APPEALED ALLEGING ERRONEOUS CONVICTION AND EXCESSIVE PENALTY - SUSPENSION AFFIRMED.

ANNA M. PELOS,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS AND ORDER
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF SPRINGFIELD, COUNTY OF UNION,)
Respondent.)

Harry Silverstein, Esq., Attorney for Appellant.
Charles W. Weeks, Esq., Attorney for Respondent.

This appeal is from a six-day suspension of appellant's plenary retail consumption license for her tavern at 624 Morris Avenue, Springfield.

Respondent imposed such suspension after finding, in a disciplinary proceeding before it, that appellant was guilty of having permitted unnecessary noise and disturbance at her tavern from July 19 through July 27, 1940. See Rule 5 of State Regulations No. 20.

Appellant contends (1) that such finding of guilt was erroneous and (2) that the penalty is excessive.

As to (1): The tavern, the "New Farmer's Inn", is near the intersection of Morris Avenue and Route 24 (apparently a well traveled highway). The general neighborhood, which is not closely developed, is mixed residential and business in character.

A resident who lives about one hundred fifty feet from the tavern, and two other residents, husband and wife, who live some hundred feet from the tavern, testified, in sum, that music (sometimes by victrola and sometimes by piano), singing (apparently of a paid female entertainer over a loud speaker system, and also by patrons joining in at the chorus), and other noise at the tavern was so voluble during the late night and early morning hours of the period in question that, even though their homes are a hundred feet or more from the tavern, they were awakened from sleep and kept awake.

Their testimony as to such loud disturbance was corroborated by two local police officers. In furnishing such corroboration, one of the officers testified, among other things, that at 1:15 A.M. on Monday, July 22, he could, while two hundred feet from the tavern, hear, above the running of the motor of his police car and the normal traffic along the road, "a female voice singing at a high pitch" later "joined by a man's voice." The other, in the course of his testimony, stated that at 2:35 A.M. on Thursday, July 25, he could, while two hundred and fifty feet from the tavern, hear a piano playing and a woman singing there.

On the other hand, appellant and her husband, who is described as the manager at the tavern, testified, in sum, that the tavern has not been operated with any excessive noise or disturbance; that, in fact, they themselves live with their three young children above the tavern. Although her husband admits that at closing time (3:00 A.M.) on July 27, while he was in charge of the tavern, a scuffle occurred there between a patron and a part-time bartender, and that these persons carried their argument to an actual fight in front of the tavern, he claims that such resulted without his fault.

In addition, two residents in the neighborhood and also a man who operated the gasoline station alongside the tavern during the time in question testified that the tavern caused no disturbance whatsoever to them. As to such testimony, while I see weight to that which was given by the two residents, I see very little, if any, in the testimony of the gasoline operator, since he apparently was not at the station after "eleven or quarter past" at night.

In net, viewing all the testimony, I thus find, as is frequent in these cases, evidence both pro and con as to whether undue noise and disturbance actually occurred at the tavern. Considering all such evidence and in view of the impartial air of the testimony of the police officers, I am satisfied that the tavern actually operated with undue noise and disturbance during the period in question, and hence that respondent was correct in so finding.

Appellant, however, seemingly contends that, in any event, this is a noisy vicinity because of traffic and because of a bowling alley nearby, and further, that the time in question was during a very hot summer spell when, all windows being open, sounds easily pervaded the neighborhood.

I see no merit to this contention. There is no evidence that the traffic and bowling alley noises occurred in such volume during the early morning hours that the music and noise at the tavern at those hours became wholly immaterial. If anything, the contrary appears true. As to the fact that all windows in the neighborhood were open because of the heat, this in no wise excused appellant, but, instead, put her under the measurable duty of so controlling the music and noise at her tavern that it would not, with such windows being open, unduly disturb the neighborhood.

Although appellant further points out that, during most if not all of the time in question, she was on vacation at the shore and not at the tavern, this fact likewise does not excuse appellant since she is strictly accountable for all violations of her employees at the tavern.

As to (2), viz., the claim of excessive penalty: It appears that, during the summer or in September of 1939, respondent in effect warned appellant (through her husband) about complaint of undue noise and disturbance at the tavern. It further appears that, in February 1940, respondent found the licensee guilty of selling liquor to a minor and suspended her license for ten days. Hence, since appellant, when found guilty of the instant violation, had thus had the benefit of a previous warning as to noise and also had against her a record of conviction in February 1940 (albeit for a violation other than noise), I cannot say that respondent's present suspension of her license for six days is in any wise arbitrary or unreasonable.

In view of the foregoing, respondent's action is affirmed.

Accordingly, it is, on this 17th day of January, 1941,

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

ORDERED, that the six-day suspension imposed by respondent on appellant's plenary retail consumption license in this case, which suspension was held in abeyance pending disposition of the instant appeal, is hereby restored, to take effect commencing January 21, 1941, at 3:00 A.M.

E. W. GARRETT,
Acting Commissioner.

7. EMPLOYMENT PERMITS - CONSPIRACY TO VIOLATE INTERNAL REVENUE LAWS IN OPERATION OF ILLICIT STILLS - MORAL TURPITUDE - APPLICANT DISQUALIFIED - EMPLOYMENT PERMIT DENIED.

January 18, 1941

Re: Case No. 360

Fingerprint returns disclose that applicant was indicted, with seventeen others, on a charge of conspiracy to violate the Internal Revenue Laws. The indictment resulted from the discovery of two large stills, found upon farms located in the State of New Jersey.

After jury trial, applicant and another were found guilty, on July 1, 1938, in the United States District Court and applicant was sentenced to serve one year and one day in a Federal penitentiary. He appealed and his conviction was affirmed by the United States Circuit Court of Appeals. He began service of his sentence on May 6, 1940, was eventually granted parole, and was released under probation on September 10, 1940.

At the hearing held herein, applicant testified that he was innocent of the charge of which he was convicted. However, the question of his guilt or innocence cannot be redetermined herein because of the verdict of the jury and the affirmance on appeal.

His attorney has introduced a transcript of the testimony taken at the trial of the case, which has been studied to determine whether there are any facts which might lead to the conclusion that the crime of which applicant was convicted did not involve moral turpitude. The transcript shows that applicant and a third individual, who pleaded guilty to the indictment, were frequent visitors at a garage which was used to store large quantities of sugar; that applicant, on a number of occasions, paid for coke and yeast which were delivered to the stills. Hence there is sufficient evidence that applicant herein was one of the principals in the conspiracy to operate the stills and, under these circumstances, I believe that the crime of which he was convicted involved moral turpitude. The Commissioner so ruled in Case No.267, Bulletin 313, Item 1. See also Case No. 307, Bulletin 375, Item 10; Case No. 326, Bulletin 409, Item 5; and Case No. 329, Bulletin 412, Item 9.

In any event I do not believe that, in view of his conviction, he is a fit person to hold a license or permit. Case No. 280, Bulletin 326, Item 8; Case No. 290, Bulletin 346, Item 13; and Case No. 332, Bulletin 418, Item 2.

It is recommended, therefore, that the application for Employment Permit be denied.

Edward J. Dorton,
Deputy Commissioner
and Counsel.

APPROVED:
E. W. GARRETT,
Acting Commissioner.

8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against ISIDORE SILVERSTEIN & MORRIS SILVERSTEIN, T/a ACE WINES & LIQUOR STORE, 167-169 First Street, Hoboken, N. J., Holder of Plenary Retail Distribution License D-18, issued by the Board of Commissioners of the City of Hoboken.	CONCLUSIONS AND ORDER

Isidore Silverstein and Morris Silverstein, by Isidore Silverstein.
Robert R. Hendricks, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The defendant-licensees have pleaded guilty to a charge of selling an alcoholic beverage at less than the Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

The Department file discloses that on December 24, 1940 an investigator of this Department, after observing a half gallon bottle of Chateau Martin Italian Type Vermouth advertised in the show window at 89¢, entered the above premises and ordered a half

gallon bottle. Isidore Silverstein, upon being tendered a one dollar bill, took the money and offered two cents in change to the investigator. The investigator then called Silverstein's attention to the 89¢ price sign in the show window, whereupon Silverstein, after checking said price sign, sold the one-half gallon bottle to the investigator for the price of 89¢. The minimum consumer price at which one-half gallon bottles of this product could be sold lawfully, at that time, was 98¢. Bulletin 416.

Even if the sale below Fair Trade price was occasioned by an inadvertent error in the posting of the show window price sign, as claimed by the defendant-licensees, it affords no excuse. When the defendant-licensee's attention was expressly directed to the variance between the price which he first asked and the price advertised in the window, it was his duty to have immediately checked his Fair Trade price list instead of relying on the window price tag. Carelessness in arranging price tags confers no immunity. Cf. Re Gleeson, Bulletin 376, Item 11.

The minimum penalty for sale below Fair Trade price is ten days. Since the instant offense is the defendant-licensees' first violation of record, the minimum penalty will be imposed.

By entering the guilty plea in ample time before the date set for hearing, the defendant-licensees have saved the Department the time and expense of proving its case. Five days of the penalty will, therefore, be remitted.

Accordingly, it is, on this 20th day of January, 1941,

ORDERED, that Plenary Retail Distribution License No. D-18, heretofore issued to Isidore Silverstein and Morris Silverstein by the Board of Commissioners of the City of Hoboken, be and the same is hereby suspended for a period of five (5) days, effective January 27, 1941, at 3:00 A.M.

E. W. GARRETT,
Acting Commissioner.

9. DISCIPLINARY PROCEEDINGS - SLOT MACHINES - 10 DAYS' SUSPENSION - SALES DURING PROHIBITED HOURS - 5 DAYS' SUSPENSION - SALES BY CLUB LICENSEE TO NON-MEMBERS - 5 DAYS' SUSPENSION - TOTAL: 20 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

EAST END REPUBLICAN LEAGUE,
300 No. 27th St.,
Camden, N. J.,

Holder of Club License CB-38 issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

CONCLUSIONS AND ORDER

East End Republican League, by Walter T. Padgett, President.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to charges that on Sunday, December 29, 1940 it possessed a jackpot slot machine which may be used for the purpose of playing for money or other valuable thing, a

device designed for the purpose of gambling, in violation of Rules 7 and 8 of State Regulations No. 20; that on said date it sold alcoholic beverages to non-members in violation of Rule 5 of State Regulations No. 7; and that at about 11:25 A.M. on the same date it sold alcoholic beverages in violation of Section 5 of an ordinance prohibiting the sale of alcoholic beverages between 2:00 A.M. on Sunday and 7:00 A.M. of the following Monday, adopted by the Board of Commissioners of the City of Camden on December 27, 1934.

The Department file discloses that two investigators, neither of whom was a member or guest of a member of the club, entered the licensed premises on Sunday, December 29, 1940 at approximately 11:00 A.M. and proceeded to the barroom. Two customers were standing at the bar with what appeared to be alcoholic beverages before them. One of the investigators ordered alcoholic beverages for himself and the other investigator from the bartender, who served them without question as to their membership in the licensee club. The service occurred at 11:25 A.M. The investigators observed a jackpot machine located at the end of the bar. The machine, which bore no manufacturer's name, appeared to be substantially identical with the jackpot machines described in Re Cohanzick Country Club, Bulletin 437, Item 5, and the items therein cited. The investigators played the machine but did not make a "hit".

The minimum penalty for the mere possession of a slot machine of this type is ten days. Re Cohanzick Country Club, supra. The minimum penalty for sales during prohibited hours is five days. Re Gamba, Bulletin 407, Item 6. The minimum penalty for sales of alcoholic beverages to non-members is five days. Re Scully-Bozarth Post 1817, V.F.W., Bulletin 407, Item 11. The license will therefore be suspended for a period of twenty days.

By entering a guilty plea in ample time before the date set for hearing, the licensee has saved the Department the time and expense of proving its case, for which five days of the total penalty will be remitted.

Accordingly, it is, on this 21st day of January, 1941,

ORDERED, that Club License CB-38, heretofore issued to East End Republican League by the Municipal Board of Alcoholic Beverage Control of the City of Camden, be and the same is hereby suspended for a period of fifteen (15) days, effective January 27, 1941, at 2:00 A.M.

E. W. GARRETT,
Acting Commissioner.

10. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - 10 DAYS' SUSPENSION - SALES DURING PROHIBITED HOURS - 5 DAYS' SUSPENSION - TOTAL: 15 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

BERTHA V. KIRDZIK,
Alphano Road,
Independence Township,
P.O. Great Meadows, N. J.,

Holder of Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Independence.

CONCLUSIONS AND ORDER

Bertha V. Kirdzik, Pro Se.
Robert R. Hendricks, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to charges of (1) selling alcoholic beverages below the Fair Trade price, in violation of Rule 6 of State Regulations No. 30, and (2) selling and permitting the consumption of alcoholic beverages on her licensed premises during prohibited hours in that sales were made and consumption was permitted on Sunday mornings between the hours of 2:00 A.M. and 12:00 o'clock noon, in violation of Section 5 of an ordinance adopted on June 25, 1938, as amended September 6, 1940, fixing license fees and regulating the sale and distribution of alcoholic beverages in the Township of Independence.

Reports of the Department agents who took part in the investigation show that on Sunday, November 24, 1940, at about 11:00 A.M., the defendant-licensee sold a pint bottle of Wilson "That's All" Whiskey to an investigator for the price of $1.30; that on Sunday, December 8, 1940, at about 10:00 A.M., the husband and employee of the defendant-licensee sold a similar bottle of the same product at the same price to another investigator; and that on both occasions, and at about the same time, beer and whiskey were purchased over the bar and consumed on the premises by the investigating agents. The minimum consumer price at which pint bottles of Wilson "That's All" Whiskey could be sold, lawfully, on those dates, was $1.33. Bulletin 424.

The minimum penalty for sale below Fair Trade price is ten days; for violation of a local ordinance prohibiting sale and consumption of alcoholic beverages during prohibited hours, five days - making a total of fifteen days.

The instant offenses are the defendant-licensee's first violations of record. In view of this, I shall not order a suspension of the license in excess of the aggregate minimum for violations of this character. Because of the guilty plea, the Department has been saved the time and expense of proving its case. Five days of the total penalty will, therefore, be remitted.

Accordingly, it is, on this 22nd day of January, 1941,

ORDERED, that Plenary Retail Consumption License C-5, heretofore issued to Bertha V. Kirdzik by the Township Committee of the Township of Independence, be and the same is hereby suspended for a period of ten (10) days, effective January 27, 1941, at 2:00 A.M.

E. W. GARRETT,
Acting Commissioner.

11. ELIGIBILITY - ASSAULT AND BATTERY - UNAGGRAVATED VIOLATION OF ALCOHOLIC BEVERAGE LAW - NOT MORAL TURPITUDE - APPLICANT NOT DISQUALIFIED BY SUCH CONVICTIONS.

January 23, 1941

Re: Case No. 361

In 1929 applicant was convicted of assault and battery and placed on probation for three years; in 1933 he was arrested on a charge of creating a disturbance and fined $5.00; in 1934 he was convicted of violating the Alcoholic Beverage Control Act and placed on probation for one year and fined $50.00; and in 1935 he pleaded guilty to a charge of being an inmate of a gambling house and received a suspended sentence.

Applicant testified that the conviction in 1929 for assault and battery resulted from a beating which he had administered to his wife after he had discovered her, under highly compromising circumstances, with another man. He swore that no weapons were involved nor was his wife injured. Under these circumstances, which are, in part, corroborated by report of the Probation Department of the county wherein applicant was convicted, I do not believe that the crime involved moral turpitude. Cf. Re Case No. 342, Bulletin 423, Item 11. His convictions in 1933 (creating a disturbance) and in 1935 (gambling house inmate) were the result of violations of a municipal ordinance. Neither of these adjudications, therefore, is a conviction of a "crime" within the meaning of R. S. 33:1-25; 26. Re Case No. 278, Bulletin 397, Item 5; Re Case No. 314, Bulletin 393, Item 9.

The conviction in 1934 on a charge of violating the Alcoholic Beverage Control Act (now known as the Alcoholic Beverage Law) arose out of the sale by applicant, while employed as a bartender in a licensed tavern, of a half pint of whiskey for off-premises consumption in a bottle other than the original container. In the absence of aggravating circumstances, a single violation of the Alcoholic Beverage Law does not involve moral turpitude. Re Case No. 349, Bulletin 432, Item 11; Re Case No. 273, Bulletin 318, Item 9; Re Case No. 241, Bulletin 290, Item 8. I do not believe that the circumstances surrounding the above described conviction were of such aggravated character as to warrant the conclusion that the element of moral turpitude was involved.

It is recommended that applicant be advised that by reason of the aforesaid convictions he is not disqualified from being employed by a liquor licensee in this State. He should be warned, however, that another violation of the Alcoholic Beverage Law will mandatorily disqualify him. R. S. 33:1-25; 26.

APPROVED:
E. W. GARRETT,
Acting Commissioner.

Robert R. Hendricks,
Attorney.

12. DISCIPLINARY PROCEEDINGS - BRAWL AND DISTURBANCE - ATTACK BY CUSTOMER, COUNTER-ATTACK BY BARTENDER IN SELF-DEFENSE - HARBORING CRIMINALS AND PERSONS OF ILL REPUTE - APPLIES TO PROFESSIONAL ROGUES AND HABITUAL LAW VIOLATORS AS DISTINGUISHED FROM PERSONS WHO MAY HAVE BEEN CONVICTED OF A CRIME BUT ARE PRESENTLY LAW-ABIDING AND NOT UNDESIRABLES - CHARGES DISMISSED.

In the Matter of Disciplinary Proceedings against MORRIS SILVER, 284 West Kinney Street, Newark, N. J., Holder of Plenary Retail Consumption License C-297, issued by Municipal Board of Alcoholic Beverage Control of the City of Newark.	CONCLUSIONS AND ORDER

Sidney Simandl, Esq., Attorney for Licensee.
Charles Basile, Esq., Attorney for Department of Alcoholic Beverage Control.

Charges were served upon the licensee, alleging that:

"1. On or about October 27, 1940, you allowed, permitted and suffered a brawl and disturbance in and upon your licensed premises, in violation of Rule 5 of State Regulations No. 20.

"2. On or about November 4, 1940, and on divers days prior thereto, you allowed, permitted and suffered William Taylor, alias 'Willie Taylor'; Walter Mills, alias 'Mohawk'; and William Christian, alias 'Honney Clap'; who are known criminals and persons of ill-repute, in and upon your licensed premises, in violation of Rule 4 of State Regulations No. 20."

As to (1): On October 27, 1940 William Christian, a patron, and Sam Harris, the bartender at the licensed premises, had a heated argument with reference to payment for a drink which Christian is alleged to have ordered for another patron. After arguing for some time, blows were exchanged across the bar, with Christian striking the first blow. There is a dispute as to what happened immediately thereafter. Christian says that he did nothing further but that Harris came from behind the bar and struck him over the head with a stick. The bartender, Taylor and Mills, who were called as witnesses by the Department, testified that after the blows had been exchanged across the bar, Christian started to call Harris vile and indecent names; that when Harris came from behind the bar with a two-inch stick, Christian advanced towards the bartender with his hand in his pocket and that the bartender then struck Christian with the stick. The bartender insists that he was acting in self-defense because Christian was the aggressor.

It is difficult to define the amount of force which a licensee or his employees may use in quelling disturbances, but, under the facts of this case, I conclude that the patron was the aggressor and that the bartender, who has been employed more than three years by the licensee, used no more force than was necessary. It

is better to call the police when a customer becomes unruly but the use of a reasonable degree of force may be necessary if an attack is made or reasonably anticipated. Hence I shall dismiss the first charge. The case is distinguished from Re Polster, Bulletin 388, Item 10, wherein it appeared that the bartender was the aggressor, there was no contention that he was attempting to defend himself from attack, a serious disturbance occurred, and the patron was seriously wounded.

As to (2): It is unquestioned that Taylor, Mills and Christian were regular patrons of the licensed premises on November 4, 1940 and prior thereto. In 1936 Taylor was sentenced to six months in the county penitentiary on a charge of atrocious assault and battery and in 1939 he was fined $50.00 on a gambling charge. He testified that he has conducted a barber shop a few doors away from the licensed premises for the last four years.

In 1929 Mills was convicted on a charge of atrocious assault and battery and sentenced to four months in the county penitentiary; in 1939 he was convicted of desertion and sentenced to serve one year in the county penitentiary. He testified that he has been regularly employed in a chicken market since March 5, 1940, the date of his release.

In 1931, Christian served thirty days in jail as a result of a conviction for assault and battery. He is regularly employed by a charcoal company.

While each of these men have been convicted of crimes, there is nothing in their records to show that they should be classified as "known criminals or persons of ill-repute" within the meaning of those terms as used in Rule 4 of State Regulations No. 20. Those terms refer to professional rogues, members of a gang of racketeers or habitual law violators. Re Gedney, Bulletin 60, Item 5. Cf. Re Palace Chop House, Bulletin 95, Item 8. Moreover, the licensee and his bartender testified that they had no knowledge that any of the three individuals had ever been convicted of crime and each of the three patrons denied that they had ever disclosed any information with reference to their criminal records to the licensee or his bartender. The purpose of the rule is to prohibit licensed premises from being used as a hang-out for persons generally known or known to the licensee or his agents to be undesirables. The rule was not intended to prohibit every person who has ever been convicted of a crime from patronizing licensed premises, particularly so where neither the licensee nor any of his employees has any knowledge of the criminal record of the patron. The latter interpretation would require a licensee to question every patron as to whether he had ever been convicted of a crime.

The second charge must also be dismissed.

Accordingly, it is, on this 23rd day of January, 1941,

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

E. W. GARRETT,
Acting Commissioner.

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

In the Matter of Disciplinary Proceedings against

JULIUS E. WEINER,
142 Washington Street,
Paterson, N. J.,

Holder of Plenary Retail Distribution License D-1, issued by the Board of Alcoholic Beverage Control of the City of Paterson.

CONCLUSIONS AND ORDER

Julius E. Weiner, Pro Se.
Robert R. Hendricks, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to a charge of selling an alcoholic beverage below the Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

The Department file discloses that on January 2, 1941 an employee of the defendant-licensee sold a 26 ounce bottle of G.&D. Champagne to an investigator for the price of $1.98. The minimum consumer price at which a 26 ounce bottle of this product could be sold, lawfully, at that time was $2.00. Bulletin 424.

Even if the sale below Fair Trade price was occasioned by reliance upon a salesman's representation that the retail price of this product was $1.98 instead of $2.00, as claimed by the defendant-licensee, it would afford no excuse. Licensees are under a duty to fix their retail prices in accordance with the prices published in the official bulletins regardless of information received from salesmen or other sources. See Re Tiger Food Company, Inc., Bulletin 377, Item 11.

The minimum penalty for sale below Fair Trade price is ten days. The instant offense, however, is not the defendant-licensee's first conviction of record. In 1939 he pleaded guilty to a similar charge of selling an alcoholic beverage below Fair Trade price, in violation of State Regulations No. 30, Rule 6, and his license was suspended, on that charge, for five days. Re Weiner, Bulletin 366, Item 5. Since the instant offense involves a second similar violation, the ordinary penalty of ten days will be doubled.

By entry of the plea, however, the Department has been saved the time and expense of proving its case. Five days of the determined penalty will, therefore, be remitted.

Accordingly, it is, on this 24th day of January, 1941,

ORDERED, that Plenary Retail Distribution License D-1, heretofore issued to Julius E. Weiner by the Board of Alcoholic Beverage Control of the City of Paterson, be and the same is hereby suspended for a period of fifteen (15) days, effective February 3, 1941, at 3:00 A.M.

E. W. Garrett
Acting Commissioner.