

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

BULLETIN 736

NOVEMBER 7, 1946.

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

BULLETIN 736

NOVEMBER 7, 1946.

1. DISCIPLINARY PROCEEDINGS - PURCHASE OF ALCOHOLIC BEVERAGES FROM AN UNLAWFUL SOURCE - UNLAWFUL STORAGE OF ALCOHOLIC BEVERAGES - FALSE STATEMENTS IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR A PERIOD OF 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

DIMITIOS VASSILIDES)
T/a HOMESTEAD BAR & RESTAURANT)
72 Beachway)
Keansburg, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-22, issued by the Mayor and Municipal Council of the Borough of Keansburg.)
-----)

Edward F. Juska, Esq., Attorney for Defendant-licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant pleads non vult to the following charges:

"1. In your application, filed with the Mayor and Municipal Council of the Borough of Keansburg and upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question 30, which asks: 'Has any individual....other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?', whereas in truth and fact one Steve Sgouris had such interest; your false statement being in violation of R. S. 33:1-25.

"2. In your said application, you also falsely stated 'No' in answer to Question 31, which asks: 'Have you agreed to pay any employee, or other person, any percentage of profits derived from the business to be conducted under the license applied for?', whereas in truth and fact you had an agreement with the said Steve Sgouris to pay him 50% of the profits of the business; your false statement being in violation of R. S. 33:1-25.

"3. From May 10, 1946 until the present time, you knowingly aided and abetted the said Steve Sgouris to exercise, contrary to R. S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses, thereby yourself violating R. S. 33:1-52.

"4. On July 11, 1946, and on two occasions shortly prior thereto, you, a New Jersey retail licensee, without authority of special permit, purchased alcoholic beverages, viz., a total of 15 kegs of beer, from a person or persons not the holder of a New Jersey manufacturer's or wholesaler's license; your purchase of these alcoholic beverages being in violation of Rule 15 of State Regulations No. 20.

"5. On July 12, 1946, and prior thereto, alcoholic beverages intended for sale in your licensed business were stored by you, without authority of special permit, on premises other than your licensed premises or a licensed public warehouse in that such alcoholic beverages were stored in a building in the rear of your licensed premises; such storage by you being in violation of Rule 25 of State Regulations No. 20."

The investigation made in this matter discloses that on June 9, 1946, defendant entered into an agreement with one Steve Sgouris. By the terms of said agreement, "all of the assets of the partnership" and the liquor license were to continue to belong exclusively to defendant but Sgouris was to devote his full time to the business and the net profits realized from the business were to be divided equally between defendant and Sgouris. An account in the name of defendant and Sgouris was opened in a bank located in the municipality in which the licensed premises are situated. Sgouris contributed \$531.00 of the \$851.30 deposited at the time the account was opened. Both parties had the privilege to sign checks drawn on the account. Both defendant and Sgouris appeared qualified to hold a license. Whether the agreement was a partnership agreement or an employment agreement, as defendant contends, need not be decided. In any event, Sgouris thereby obtained an interest in the business and received a percentage of profits. It follows that the statements in the application were false.

On July 11, 1946, and some time previous thereto, a bartender employed by Sgouris purchased fifteen kegs of beer from a person not the holder of a New Jersey manufacturer's or wholesaler's license. A number of these kegs were stored in a building located in the rear yard of the licensed premises.

Since these proceedings were heard at this Department the attorney of defendant advised that the illegal situation has been corrected in so far as the partnership is concerned. An amicable adjustment has been made by the parties whereby Sgouris has withdrawn from the business.

Under the circumstances, I shall suspend defendant's license for a period of forty-five days, less five days for the plea entered herein, or a net suspension of forty days. Cf. Re McQueeney, Bulletin 729, Item 8; Re O'Neill, Bulletin 727, Item 8.

Accordingly, it is, on this 25th day of October, 1946,

ORDERED, that Plenary Retail Consumption License C-22, issued by the Mayor and Municipal Council of the Borough of Keansburg to Dimitios Vassilides, t/a Homestead Bar & Restaurant, for premises 72 Beachway, Keansburg, be and the same is hereby suspended for a period of forty (40) days, commencing at 2:00 a.m. November 4, 1946, and terminating at 2:00 a.m. December 14, 1946.

ERWIN B. HOCK
Deputy Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION DURING PROHIBITED HOURS (SUNDAY) - PERMITTING MINOR, HOLDER OF EMPLOYMENT PERMIT, TO SELL ALCOHOLIC BEVERAGES - LICENSE SUSPENDED FOR A PERIOD OF 25 DAYS, LESS 5 FOR PLEA.

DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BY MINOR PERMITTEE CONTRARY TO CONDITIONS OF EMPLOYMENT PERMIT - PERMIT SUSPENDED FOR A PERIOD OF 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

TRENZ COMMUNITY MARKET, INC.)
315 Centre Avenue)
Secaucus, N. J.,)

Holder of Plenary Retail Distribution License D-7, issued by the Town Council of the Town of Secaucus,)

-and-)

VIRGINIA TRENZ)
315 Centre Avenue)
Secaucus, N. J.,)

Holder of Employment Permit No. 745, issued by the State Commissioner of Alcoholic Beverage Control.)
-----)

CONCLUSIONS AND ORDERS

Leo J. Berg, Esq., Attorney for Defendant-licensee and Defendant-permittee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant-licensee, through its attorney, enters a plea of non vult to charges of (1) selling alcoholic beverages on Sunday, September 15, 1946, in violation of Rule 1 of State Regulations No. 38 and (2) permitting an employee, Virginia Trenz, a minor, who holds an employment permit for a person disqualified by reason of age, to sell alcoholic beverages, in violation of Rule 2 of State Regulations No. 13.

Defendant-permittee pleads non vult to a charge of selling and serving alcoholic beverages, contrary to the conditions upon which her permit was issued. Both proceedings will be considered and disposed of herein since they arose out of the same incident.

The departmental file discloses that defendant-licensee operates a self-service market. Bottles of liquor displayed on shelves in the store were as readily accessible to prospective customers as other merchandise. Defendant-licensee has been instructed to discontinue the "self-service" plan of the sale of alcoholic beverages. Cf. Re Freund, Bulletin 700, Item 2.

On the Sunday in question, according to the statements of two ABC investigators, they observed a customer take a pint bottle of whiskey from a shelf, place it with other merchandise which he was purchasing, and then go to the cashier and make payment for all of the items including the bottle of whiskey. Later on the same day, one of the ABC agents purchased two bottles of beer from a salesgirl, Virginia Trenz, who obtained the bottles from a refrigerator in the store. Virginia Trenz is seventeen years of age.

Defendant-licensee has no previous adjudicated record. However, on two previous occasions it had employed minors for whom employment

permits were not obtained until after the matter had been called to the attention of the manager in charge. Under the circumstances, I shall suspend the license of defendant-licensee for a period of fifteen days on charge (1), Re Gattuso, Bulletin 587, Item 1, and for a further period of ten days on charge (2). Five days will be remitted because of the plea entered herein, making a net suspension of twenty days. I shall suspend the permit issued to Virginia Trenz for a period of thirty days, less five days for the plea, or a net suspension of twenty-five days. Re Leoshko, Bulletin 510, Item 10.

Accordingly, it is, on this 25th day of October, 1946,

ORDERED, that Plenary Retail Distribution License D-7, issued by the Town Council of the Town of Secaucus to Trenz Community Market, Inc., 315 Centre Avenue, Secaucus, be and the same is hereby suspended for a period of twenty (20) days, commencing at 9:00 a.m. November 1, 1946, and terminating at 9:00 a.m. November 21, 1946; and it is further

ORDERED that Employment Permit No. 745, issued by the State Commissioner of Alcoholic Beverage Control to Virginia Trenz, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 9:00 a.m. November 1, 1946, and terminating at 9:00 a.m. November 26, 1946.

ERWIN B. HOCK
Deputy Commissioner.

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

In the Matter of Disciplinary Proceedings against)

NEILSON BEVERAGE CO., INC.)
310 George Street)
New Brunswick, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-63, issued by the Board of Commissioners of the City of New Brunswick.)
-----)

Morris Spritzer, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

The defendant pleaded non vult to a charge alleging that, on September 26, 1946, it possessed two 4/5 quart bottles of "Teacher's Highland Cream Perfection of Blended Scotch Whisky" and one 4/5 quart bottle of "The Blended Scotch Whisky of the White Horse Cellar", all of which bottles contained alcoholic beverages not genuine as labeled in violation of R. S. 33:1-50.

The violation is complete even though the licensee professes lack of knowledge, consent or personal participation in the offense. Re Barrale, Bulletin 705, Item 5.

The minimum twenty-day penalty will be imposed in the absence, as here, of any prior adjudicated record against the defendant. Re Zeidner & Cohen, Bulletin 680, Item 2.

Accordingly, it is, on this 25th day of October, 1946,

ORDERED, that Plenary Retail Consumption License C-63, issued by the Board of Commissioners of the City of New Brunswick to Neilson Beverage Co., Inc., for premises 310 George Street, New Brunswick, be and the same is hereby suspended for a period of twenty (20) days.

In accordance with Notice of August 23, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK
Deputy Commissioner.

4. DISCIPLINARY PROCEEDINGS - FRONT - AIDING AND ABETTING
NON-LICENSEES TO EXERCISE THE RIGHTS AND PRIVILEGES OF LICENSE -
ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR A PERIOD OF
30 DAYS.

In the Matter of Disciplinary Proceedings against)
EUGENE SALAMANDER)
T/a CEDAR INN)
Elizabeth Street)
Franklin Township)
P.O. South Bound Brook, N. J.,)
Holder of Plenary Retail Consumption License C-5, issued by the)
Township Committee of the Township of Franklin, and transferred during)
the pendency of these proceedings to)
EUGENE and MICHAEL SALAMANDER)
for the same premises.)
-----)

CONCLUSIONS
AND ORDER

Milton A. Weiss, Esq., Attorney for Defendant-licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic
Beverage Control.

The defendant pleaded non vult to a charge alleging that, since October 23, 1945, he permitted Michael Salamander and Antonia Salamander to exercise the rights and privileges of his license.

By his plea, the defendant admits that his father and mother, Michael and Antonia Salamander, were undisclosed partners in his license and business conducted thereunder. The reason for concealing the father's interest was that he is a Polish national and was under the erroneous opinion that he was therefore barred from becoming a licensee in this state. However, citizens of Poland are protected by reciprocal treaty between this country and Poland and are eligible to hold a liquor license. Re Zimmerman, Bulletin 352; Item 3.

Since the institution of these proceedings, the license has been transferred to a partnership consisting of Eugene and Michael Salamander. The mother has apparently relinquished all of her interest in the license and business. The prior unlawful situation would appear, therefore, to have been corrected.

The minimum penalty imposed in "front" cases is a suspension for a period of thirty days. Re Nicomini, Bulletin 686, Item 7. Where the motivating factor for the fraud is lack of requisite citizenship, the minimum suspension is sixty days. Re Ferrucci, Bulletin 682, Item 12. Since, however, the undisclosed partner herein was not disqualified by reason of non-citizenship, although incorrectly advised to that effect, I shall fix the suspension for the instant violation at a period of thirty days.

Accordingly, it is, on this 25th day of October, 1946,

ORDERED, that Plenary Retail Consumption License C-5, originally issued by the Township Committee of the Township of Franklin to Eugene Salamander, t/a Cedar Inn, for premises on Elizabeth Street, Franklin Township, and transferred during the pendency of these proceedings to Eugene and Michael Salamander, for the same premises, be and the same is hereby suspended for a period of thirty (30) days, commencing at 2:00 a.m. October 30, 1946, and terminating at 2:00 a.m. November 29, 1946.

ERWIN B. HOCK
Deputy Commissioner.

5. DISCIPLINARY PROCEEDINGS - EMPLOYING MINOR TO WORK ON LICENSED PREMISES WITHOUT PERMIT - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING MATERIAL FACT - ILLEGAL SITUATION CORRECTED - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
WM. HOFFMAN & SONS, INC.
116 Liverpool Avenue
Egg Harbor City, N. J.,
Holder of Plenary Retail Distribution License D-3 issued by the Common Council of the City of Egg Harbor City.
-----)

CONCLUSIONS
AND ORDER

Defendant-licensee, by Joseph Husta, President.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded non vult to the following charges:

"1. In your application, filed with the Common Council of Egg Harbor City, and upon which you obtained your current plenary retail distribution license, you falsely stated 'No' in answer to Question 26 which asks: 'Does the individual signing this application on behalf of said corporation know, or have any reason whatsoever to believe or suspect, that.... any holder, directly or indirectly, by any device or subterfuge whatsoever, of more than ten (10) per cent. in beneficial interest of the capital stock of said corporation would fail to qualify as an individual applicant for the license hereby applied for in any respect?', whereas in truth and fact Richard Husta, holder of fifty (50) per cent of your capital stock, was so disqualified in that he was under the age of twenty-one years; such false statement being in violation of R.S. 33:1-25.

"2. From June 6, 1946, until the present time, you knowingly employed a minor, Richard Husta, to work on your licensed premises without special permit therefor; such employment by you being in violation of R. S. 33:1-26 and Rule 3 of State Regulations No. 13."

Defendant corporation has held a license since July 1, 1942. In 1942 the stock of the corporation was beneficially owned by the families of Joseph Husta and William Hoffman, each of whom owned or controlled ten of the outstanding twenty shares of the corporation. On March 16, 1946, William Hoffman sold his ten shares to Joseph Husta, who, on March 18, 1946, sold said ten shares to his son, Richard J. Husta.

Richard J. Husta was born on September 12, 1925. Hence he was only twenty years of age at the time he became the owner of 50% of the stock of defendant corporation. R. S. 33:1-25 provides that no retail license shall be issued to any person under the age of twenty-one years and that no retail license shall be issued to any corporation, with certain exceptions not here material, unless each owner, directly or indirectly, of more than 10% of its stock qualifies in all respects as an individual applicant. The ten shares of stock are owned at the present time by Richard J. Husta who, it appears, since September 12, 1946, has been fully qualified to hold said shares of stock. However, between March 18, 1946 and September 12, 1946, he was the owner of said shares despite the fact that during that period he was not qualified to hold said shares.

At the hearing herein the President of defendant corporation testified that he did not know that an individual applicant has to be twenty-one years of age and, further, that at the time the stock was transferred he thought his son was actually twenty-one years of age. It appears that the son was in military service for two and one-half years and that the stock was transferred to him prior to his return to civilian life. Ignorance of the law does not excuse a violation and it is strange that the father did not know the age of his son. The illegal situation appears to have been corrected, but a suspension must be imposed because of the false statement in the application and the employment of a minor without the necessary employment permit.

Defendant has a prior record which involved illegal operation during the early part of 1942 under a license held by an individual who sold out to defendant corporation. Re Wm. Hoffman & Sons, Inc., Bulletin 533, Item 4. This is the first case involving a violation of the nature set forth in charge (1). The two charges herein are closely related and, under all the circumstances, I shall suspend defendant's license for a period of fifteen days, less five days for the plea, making a net suspension of ten days.

Since it appears that the illegal situation has been corrected by the passage of time since the charges herein were served, the rule to show cause why the license should not be cancelled because it was improvidently issued will be dismissed.

Accordingly, it is, on this 28th day of October, 1946,

ORDERED, that Plenary Retail Distribution License D-3, issued by the Common Council of the City of Egg Harbor City to Wm. Hoffman & Sons, Inc., for premises 116 Liverpool Avenue, Egg Harbor City, be and the same is hereby suspended for a period of ten (10) days, commencing at 12:01 a.m. November 4, 1946, and terminating at 12:01 a.m. November 14, 1946.

ERWIN B. HOCK
Deputy Commissioner.

6. DISCIPLINARY PROCEEDINGS - CHARGE OF FALSE STATEMENT IN LICENSE APPLICATION CONCEALING MATERIAL FACT DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against)

CLUB 74, INC.)
74 Speedwell Avenue)
Morristown, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-14 for the 1945-46 and 1946-47 fiscal years, issued by the Board of Aldermen of the Town of Morristown.)

Harold Farkas, Esq., Attorney for Defendant-licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant pleaded not guilty to a charge that it falsely concealed the interest of one of its stockholders in stock of the corporate defendant held by another stockholder.

It appears that this corporation was organized by two brothers -- one brother and his wife holding 90% of the corporate stock, the other brother holding 10% of said stock. The brother holding 10% of the corporate stock apparently advanced more than half the total capital invested in the defendant corporation. This and the fact that each brother, apparently because of a confusion of terms, admitted that they were "partners" in the business, justified the filing of the charge herein.

The evidence disclosed, however, that the business is operated by the corporate defendant; that each brother works on the license premises and receives a salary of \$50.00 per week.

The situation respecting the contribution to capital at the time the corporation was organized was explained as follows: The brother who holds 10% of the stock testified that the money advanced by him in excess of the value of said stock was a personal loan to the brother who controls 90% of the stock. Both brothers testified that, so far as ownership of the stock is concerned, each owns the respective amount shown on the books of defendant corporation.

It is not unusual for brother to help brother. I shall accept the testimony of the brothers as true. Cf. Re Kelly, Bulletin 627, Item 2.

The salaries paid the brothers, though equal, were not excessive and certainly do not necessarily disclose an equal interest in the assets of the corporation or in the ownership of its stock. Salary is payment for services rendered. Under the circumstances of this case the payment of salaries was not used as a method of distributing profit. At the time of the hearing there had been no profit.

Under the circumstances of this case, I am not satisfied that the Department has produced proof sufficient to sustain the charge and, accordingly, I shall dismiss the charge. Cf. Re Carlucci, Bulletin 405, Item 9; Re Mohawk Grill Inc. et al., Bulletin 607, Item 1.

Accordingly, it is, on this 28th day of October, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

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

In the Matter of Disciplinary Proceedings against)

MERVIN STERN)
T/a La MARR'S)
2800 Palisade Avenue)
Weehawken, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-13, issued by the Township Committee of the Township of Weehawken.)
-----)

Mervin Stern, Defendant-licensee, Pro Se.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

The defendant pleaded non vult to a charge alleging that, on October 1, 1946, he possessed one 4/5 quart bottle of "Ballantine's Liqueur Blended Scotch Whisky" and one 4/5 quart bottle of "The Blended Scotch Whisky of the White Horse Cellar", both of which bottles contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

Since the licensee has no prior record, the usual fifteen-day penalty will be imposed. Re Nurse, Bulletin 680, Item 7.

Accordingly, it is, on this 4th day of November, 1946,

ORDERED that Plenary Retail Consumption License C-13, issued by the Township Committee of the Township of Weehawken to Mervin Stern, t/a La Marr's, for premises 2800 Palisade Avenue, Weehawken, be and the same is hereby suspended for a period of fifteen (15) days. In accordance with Notice of August 23, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK
Deputy Commissioner.

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

In the Matter of Disciplinary Proceedings against
 EDWIN A. DOLAN & MRS. MARY A. REININGER
 T/a THE IDLE HOUR
 Lakewood Rd. & Barton Ave.
 Point Pleasant, N. J.,
 Holders of Plenary Retail Consumption License C-2, issued by the Mayor and Council of the Borough of Point Pleasant.

CONCLUSIONS AND ORDER

 James A. Coolahan, Esq., Attorney for Defendant-licensees.
 Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

The defendants pleaded not guilty to a charge alleging that they possessed a 4/5 quart bottle of "Walker's DeLuxe Straight Bourbon Whiskey", which bottle contained an alcoholic beverage not genuine as labeled, in violation of R. S. 33:1-50.

On July 11, 1946, an ABC agent, upon routine inspection, tested the contents of thirty-nine open containers of liquor on the defendants' premises and seized the bottle in question. Chemical analysis disclosed that the contents of this bottle varied substantially in proof, color, acids and solids from a genuine sample of the same product.

The defense is predicated upon the insistence of the licensees that they knew nothing of the violation and that they did not personally tamper with the contents of the bottle. Although there is nothing in the record to contradict this assertion, the defendants must nonetheless be responsible for the violation since the issue herein does not require that the element of personal knowledge of, or participation in, the adulteration, be litigated.

I find the defendants guilty as charged.

This is the first time that these licensees have been cited in disciplinary proceedings. Under the circumstances, the usual fifteen-day penalty will be imposed. Re Rudolph, Bulletin 680, Item 1.

Accordingly, it is, on this 4th day of November, 1946,

ORDERED that Plenary Retail Consumption License C-2, issued the Mayor and Council of the Borough of Point Pleasant to Edwin A. Dolan & Mrs. Mary A. Reininger, t/a The Idle Hour, for premises on Lakewood Road & Barton Avenue, Point Pleasant, be and the same is hereby suspended for a period of fifteen (15) days. Pursuant to Notice of August 23, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK
Deputy Commissioner.

10. MORAL TURPITUDE - CRIME OF POSSESSION OF ILLICIT STILL SINCE REPEAL INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - PETITION DENIED WITH LEAVE TO REAPPLY AFTER A LAPSE OF FIVE YEARS FROM DATE OF CONVICTION.

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. 560
-----)

The petition filed herein recites that petitioner was arrested in February, 1941, and entered a plea of guilty to the crime of possessing alcoholic distilling equipment, as a result of which he was sentenced to serve one day.

Fingerprint returns disclose that on September 3, 1941, petitioner and others were indicted and charged with engaging in the business of distiller, possession of an unregistered still, fermenting mash and concealing un-taxpaid distilled spirits, in violation of Title 26 of the Internal Revenue Code. On December 9, 1941, petitioner entered a plea of guilty to the third count of said indictment and the remaining counts were later nolle prossed. On February 6, 1942, in a Federal District Court, petitioner received a suspended sentence and was placed on probation as a result of his plea previously entered.

It has been determined in numerous cases that any person convicted of a crime involving the operation of a still since Repeal has been convicted of a crime involving moral turpitude. I conclude that the crime of which petitioner was convicted was a crime involving moral turpitude.

R. S. 33:1-31.2 provides that any person convicted of a crime involving moral turpitude may, after the lapse of five years from the date of the conviction, apply for an order removing the resulting statutory disqualification from obtaining or holding any license or permit under the provisions of the Alcoholic Beverage Law. It is apparent that the application made herein is premature and that the petitioner will not be eligible for relief prior to February 6, 1947.

Accordingly, it is, on this 1st day of November, 1946,

ORDERED, that the petition herein be and the same is hereby dismissed, with leave to file a new petition on or after February 6, 1947.

ERWIN B. HOCK
Deputy Commissioner.

11. MORAL TURPITUDE - CRIME OF BREAKING, ENTERING AND LARCENY INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS LAST PAST NOT SHOWN - APPLICATION TO LIFT DENIED.

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. 550.
-----)

The petitioner's verified petition in this cause discloses that he was convicted in February, 1928, of the crimes of breaking and entering and larceny. He was released from prison after serving three months of his six months' sentence.

This conviction involves the element of moral turpitude. Re Case No. 312, Bulletin 603, Item 6.

In June, 1945, the petitioner pleaded non vult to the crime of receiving stolen goods, as a result of which he was fined \$200.00 and received a suspended six months' prison sentence and placed upon probation for a three-year period.

Although it has been held that a plea of non vult and sentence thereupon constitute a conviction within the meaning of the Alcoholic Beverage Law (see Re Vesey, Bulletin 608, Item 1), it is unnecessary to make such determination herein. It is sufficient to say that the proceedings involving his arrest for the crime of receiving stolen goods constitutes such misconduct as to bar the petitioner from any relief under the provisions of R. S. 33:1-31.2.

There is an additional reason for denying the prayer of the petition. Between July, 1940 and May, 1945, the petitioner held liquor licenses, issued to him upon the basis of five separate license applications, in each of which he falsely denied that he had ever been convicted of any crime. The petitioner's explanation that he did not believe that his arrest in 1928 had resulted in any conviction of crime, and that he had difficulty in obtaining his criminal record from the local enforcement authorities, furnish no excuse for the falsifications.

The petition will be dismissed.

Accordingly, it is, on this 4th day of November, 1946,

ORDERED that the petition herein praying that the petitioner's disqualification from holding a liquor license or being employed by a liquor licensee in this state be lifted, be and the same is hereby dismissed.

ERWIN B. HOCK
Deputy Commissioner.

12. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO ANOTHER RETAIL LICENSEE - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against PETER ALLEGRINA T/a VILLA ALLEGRINA N/S of Lakewood Avenue Manchester Township P. O. Whitings, N. J., Holder of Plenary Retail Consumption License C-1, issued by the Township Committee of the Township of Manchester.

CONCLUSIONS AND ORDER

Edward F. Beers, Esq., Attorney for Defendant-licensee. Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

Defendant pleads non vult to the following charge:

"On August 12, 1946, you, a New Jersey retail licensee, sold alcoholic beverages, viz., 3 - 4/5 quart bottles labeled 'Canadian Club Canadian Blended Whisky' and 3 - 4/5 quart bottles of 'Harwood's Canadian Blended Whisky' to another retail licensee, Thomas Gianatos, t/a Leggs & Mathis, 410-412 Boulevard, Seaside Heights, N. J., whereby you violated Rule 15 of State Regulations No. 20 and, since such sale exceeded the privileges of your plenary retail consumption license as defined by R. S. 33:1-12(1), you thereby also violated R. S. 33:1-2."

The investigation in the instant case discloses that defendant, on August 12, 1946, sold six bottles of whiskey to one Thomas Gianatos, who is the holder of a plenary retail consumption license. Defendant, while admitting that he sold the whiskey to Gianatos, claimed that the latter did not tell him what he was going to do with it. Defendant also claims that he was also going to charge Gianatos the regular retail price. He did admit, however, that he knew Gianatos was a retail liquor licensee. The explanation given by defendant does not warrant any mitigation of the penalty to be imposed for the instant violation. If this practice were permitted to continue, proper control of the liquor industry would be seriously impaired.

The licensee has no prior record. I will, therefore, suspend the license for fifteen days. Five days will be remitted for the plea, making a net suspension of ten days. Re Rappaport, Bulletin 641, Item 1.

Accordingly, it is, on this 6th day of November, 1946,

ORDERED that Plenary Retail Consumption License C-1, issued by the Township Committee of the Township of Manchester to Peter Allegrina, t/a Villa Allegrina, for premises on N/S of Lakewood Avenue, Manchester, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. November 12, 1946, and terminating at 2:00 a.m. November 22, 1946.

ERWIN B. HOCK Deputy Commissioner.

13. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO ANOTHER RETAIL LICENSEE - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MAX LEVINE)
T/a AMERICAN HOUSE)
Main Street)
Plumsted Township)
P. O. New Egypt, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-1, issued by the Township Committee of the Township of Plumsted.)

Edward F. Beers, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

Defendant-licensee pleads non vult to the following charge:

"On August 13, 1946, you, a New Jersey retail licensee, sold alcoholic beverages, viz., 12 - 4/5 quart bottles labeled 'Harwood's Canadian Blended Whiskey', to another retail licensee, Thomas Gianatos, t/a Leggs & Mathis, 410-412 Boulevard, Seaside Heights, N. J., whereby you violated Rule 15 of State Regulations No. 20 and, since such sale exceeded the privileges of your plenary retail consumption license as defined by R. S. 33:1-12(1), you thereby also violated R. S. 33:1-2."

The departmental file in the instant case discloses that defendant sold twelve 4/5 quart bottles of whiskey to one Thomas Gianatos, who is a retail liquor licensee. Defendant admits that he knew it was unlawful for one retail licensee to sell to another retail licensee, but he states that he believed it was for Gianatos' personal use and not for the purpose of resale. Defendant destroyed the serial number on the carton containing the bottles of whiskey. His explanation for so doing was that he thought it was "the formality of the law". The circumstances surrounding the entire transaction dispel any doubt as to the knowledge of the defendant relative to the illegal transaction.

Violations of this character are serious because of the enforcement difficulties which arise when retailers make sales of alcoholic beverages outside the scope of their licenses.

Defendant has no previous adjudicated record. I shall, therefore, suspend his license for a period of fifteen days, less five days for the plea, making a net suspension of ten days. Re Rappaport, Bulletin 641, Item 1.

Accordingly, it is, on this 6th day of November, 1946,

ORDERED that Plenary Retail Consumption License C-1, issued by the Township Committee of the Township of Plumsted to Max Levine, t/a American House, for premises on Main Street, Plumsted, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. November 12, 1946, and terminating at 2:00 a.m. November 22, 1946.

ERWIN B. HOCK
Deputy Commissioner.

14. STATE LICENSES - NEW APPLICATIONS FILED.

John Bacigalupo
East Landis Ave.
Buena Vista Township, East Vineland, N. J.
Application for Public Warehouse License filed October 29, 1946.

Joseph H. Cetti
T/a Stevens Beverage Distributors
315 Stevens Street
Camden, N. J.
Application for State Beverage Distributor's License filed
October 31, 1946.

L & H Transportation Co., Inc.
3212 Smallman Street
Pittsburgh, Pa.
Application for Transportation License filed November 4, 1946.

John Stack, Jr., Joseph B. Stack and Nicholas A. Stack
T/a Red Ball Trucking Company
119 Ray Street
Garfield, N. J.
Application for Transportation License filed November 6, 1946.

Frank Mayer
24 Branford Place
Newark, N. J.
Application for Plenary Wholesale License filed November 6,
1946.

Harold C. Stoppiello
16 Lafayette St.
Orange, N. J.
Application for State Beverage Distributor's License filed
November 7, 1946.

Erwin B. Hock
Deputy Commissioner.

Dated: November 7, 1946.