

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

BULLETIN 527

SEPTEMBER 18, 1942.

1. DISCIPLINARY PROCEEDINGS - EMPLOYMENT OF DISQUALIFIED PERSON (AGE) IN VIOLATION OF R. S. 33:1-26 - PREVIOUS RECORD - 5 DAYS' SUSPENSION - CHARGE OF PERMITTING DISQUALIFIED PERSON TO SELL ALCOHOLIC BEVERAGES IN VIOLATION OF RULE 3 OF STATE REGULATIONS NO. 11 DISMISSED.

DISCIPLINARY PROCEEDINGS - CHARGE OF SELLING ALCOHOLIC BEVERAGES CONTRARY TO EMPLOYMENT PERMIT DISMISSED.

In the Matter of Disciplinary Proceedings against )

RALPH BERGER, )  
T/a BERGER'S DELICATESSEN, )  
5206 Ventnor Avenue, )  
Ventnor City, N. J., )

holder of Plenary Retail Distribution License D-4 (fiscal year 1941-42) and Plenary Retail Distribution License D-4 (fiscal year 1942-43), issued by the Common Council of the City of Ventnor City. )

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

BELLA BERGER, )  
5010 Ventnor Avenue, )  
Ventnor City, N. J., )

holder of Employment Permit No. 1655 (fiscal year 1941-42) and Employment Permit No. 1583 (fiscal year 1942-43) issued by the State Commissioner of Alcoholic Beverage Control. )  
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CONCLUSIONS AND ORDER

Leo J. Berg, Esq., Attorney for Defendants.  
Emerson A. Tschupp, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleaded non vult to a charge alleging that between October 27, 1941 and November 26, 1941 he knowingly employed Edward Young, Jr., a person who would fail to qualify as a licensee by reason of age, in violation of R. S. 33:1-26.

The facts are that, between the dates mentioned in the charge, Edward Young, Jr., who was then twenty years of age, was employed on the licensed premises without an employment permit required by State Regulations No. 11. The young man testified under oath at the hearing that, when he obtained employment, he had misrepresented his age to the licensee because he was married and "needed the job." I shall consider this as a mitigating circumstance in fixing penalty.

Defendant-licensee pleaded not guilty to an additional charge that, on November 6, 1941, he had permitted his wife, Bella Berger, holder of an employment permit for a person disqualified by reason of citizenship, to sell alcoholic beverages, in violation of Rule 3 of State Regulations No. 11.

Defendant-permittee, Bella Berger, pleaded not guilty to a charge that, on the above date, she sold alcoholic beverages in contravention of a condition in her employment permit which provided that, if the holder does not qualify as to citizenship, such permittee shall not in any manner serve, sell or solicit the sale of alcoholic beverages.

On November 6, 1941 investigators from this Department purchased two cans of beer from Bella Berger in the licensed premises. At that time she held an employment permit which contained the condition heretofore set forth. This permit had been issued to Bella Berger after she had represented in her application that she was a citizen of "Russia."

The defense is that she was, in fact, a citizen of Poland, and, hence, because of a treaty between the Republic of Poland and the United States, could not be excluded, because of non-citizenship alone, from privileges afforded to citizens of the United States. Re Guskind, Bulletin 130, Item 5.

The evidence shows that Bella Berger was born in a town, which, at the time of her birth, was part of Russia. She remained in or near this town, which became part of the Republic of Poland when Poland was established. She came to the United States in March 1921. The Immigration and Naturalization Service of the United States Department of Justice has advised me:

"the records of admission of aliens to the United States at the Port of New York indicate that one Bejla Kircher effected legal entry for permanent residence at said port on March 27, 1921 via S. S. 'Lapland.' Said record of entry indicates her citizenship to be Polish; her place of birth, Ostrog, Poland; and her last permanent residence, Zydwowska, Poland."

I am satisfied from the evidence that Bejla Kircher is the same person known since her marriage to defendant-licensee as Bella Berger. As a Polish national she has applied for and received her first papers. Under the circumstances, I find that Bella Berger is, in fact, a citizen of Poland and, hence, was not prohibited from selling alcoholic beverages in this State.

The defendant, Bella Berger, in her application for a permit, recited that she was a Russian national and as a result received a conditional permit. Thereafter she violated this condition. This being the case, under normal circumstances the permittee would be estopped from taking a position at this time contrary to that disclosed in her sworn application. However, as everyone knows, conditions have not been normal for many years in that part of Europe from which the permittee emigrated. Unfortunately, the land of defendant-permittee's birth has been the favorite football of the gods of war. That confusion may have existed in her mind as to her status is understandable. In view of my finding that defendant-permittee is a citizen of Poland, I do not purpose to punish her at this time because of the inconsistent statement which she has heretofore made as to her citizenship. It must be noted, however, that

permittees should, in every instance, strictly comply with all conditions contained in their permits. In the event of a change in their status or receipt of new evidence with respect thereto, the Department should be notified and, if necessary, the permit in question surrendered or amended as the facts may require. The additional charge against the licensee, Ralph Berger, is therefore dismissed. The charge against Bella Berger is also dismissed.

As to penalty for the unlawful employment of Edward Young, Jr.: Because of the mitigating circumstances heretofore set forth, and the plea herein, I would, ordinarily, reduce the usual five-day penalty. However, I find that, in 1939, defendant-licensee's license was suspended for five days because of a fair trade violation. Since this is a second violation, albeit of a different character, I shall impose the usual five-day suspension.

The penalty herein is effective against defendant's renewal license for the current (1942-43) year. State Regulations No. 15.

Accordingly, it is, on this 8th day of September, 1942,

ORDERED, that Plenary Retail Distribution License D-4, heretofore issued to Ralph Berger, t/a Berger's Delicatessen, for premises 5206 Ventnor Avenue, Ventnor City, N. J., by the Common Council of the City of Ventnor City, be and the same is hereby suspended for a period of five (5) days, commencing September 14, 1942, at 2:00 A.M. and terminating on September 19, 1942, at 2:00 A. M.

ALFRED E. DRISCOLL,  
Commissioner.

2. APPELLATE DECISIONS - BETTLEWOOD REPUBLICAN CLUB, INC. v. TOWNSHIP OF HADDON.

BETTLEWOOD REPUBLICAN CLUB, INC.,	)	
Appellant,	)	
-vs-	)	ON APPEAL
	)	CONCLUSIONS AND ORDER
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF HADDON,	)	
Respondent	)	

William T. Cahill, Esq., Attorney for Appellant.  
Mark Marritz, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of renewal of a club license for the current fiscal year.

The petition of appeal sets forth that renewal was denied for the stated reason that the owner of the property had not paid the real estate taxes upon the premises occupied by the club. The petition filed, on July 9, 1942, further sets forth that the taxes are "now paid to date."

Respondent filed an answer setting forth other reasons for denial. However, by letter dated September 4, 1942, the attorney for respondent has advised me that, acting upon instructions received from the Township Committee, he is withdrawing the answer filed herein.

Failure to pay real estate taxes due upon premises occupied by a licensee is not a sufficient reason for denial of a license. Re Sofield, Bulletin 28, Item 1. Since, on the record herein, no other issue now appears to be involved, I must reverse the action of respondent.

Accordingly, it is, on this 8th day of September, 1942,

ORDERED, that respondent's action in denying appellant's application for renewal of its club license for the current fiscal year be and the same is hereby reversed; and it is further

ORDERED, that respondent issue forthwith to appellant a club license for premises on Ormand Avenue at Newton Lake, Township of Haddon.

ALFRED E. DRISCOLL,  
Commissioner.

3. APPELLATE DECISIONS - BILOWITH v. PASSAIC

APPELLATE DECISIONS - SANSON v. PASSAIC.

CHARLES BILOWITH, )  
Appellant, )

-vs-

BOARD OF COMMISSIONERS OF THE )  
CITY OF PASSAIC, )  
Respondent )

MARIO V. SANSON, )  
Appellant, )

-vs-

BOARD OF COMMISSIONERS OF THE )  
CITY OF PASSAIC, )  
Respondent )

ON APPEAL  
CONCLUSIONS AND ORDER

Michael Shershin, Esq., Attorney for both appellants.  
Thomas E. Duffy, Esq., Attorney for respondent.

BY THE COMMISSIONER:

Because of the issues involved, these cases may be decided together.

Appellant, Charles Bilowith, held License C-144 (for fiscal year 1941-42) for premises at 771 Main Avenue, Passaic. On June 18, 1942 appellant, Mario V. Sanson, filed two applications with respondent; one, an application to transfer License C-144 (for fiscal year 1941-42) from Charles Bilowith to Mario V. Sanson, and the other, an application by Mario V. Sanson for a renewal of said license for the fiscal year 1942-43. On June 24, 1942 certain charges, which are hereinafter set forth, were served on Charles Bilowith and he was ordered to show cause why his License C-144 should not be revoked. On June 30, 1942 a hearing was held before respondent on the charges preferred against Bilowith. This hearing was continued to July 7, 1942. On June 30, 1942 respondent also deferred action on the

applications filed by Sanson pending the outcome of the hearing on the charges aforesaid. On July 7, 1942 respondent revoked the Bilowith license and denied both applications filed by Sanson. Hence these appeals.

As to the Bilowith appeal: The charges preferred against Charles Bilowith are substantially as follows:

CHARGE 1

"On or about March 13, 1942, you did permit, allow or suffer in and upon the licensed premises one 'Florence', later identified as Margaret \_\_\_\_\_ \*\*\*\*\*; said 'Florence' later identified as Margaret \_\_\_\_\_ being a known prostitute, in violation of State Regulations No. 20, Rule 4, which provides as follows:

- '4. No licensee shall allow, permit or suffer in or upon the licensed premises any known criminals, gangsters, racketeers, pick-pockets, swindlers, confidence men, prostitutes, female impersonators, or other persons of ill-repute.'

CHARGE 2

"On or about March 20th, 1942, you did permit, allow or suffer in and upon the licensed premises one 'Florence', later identified as Margaret \_\_\_\_\_ \*\*\*\*\*; said 'Florence' later identified as Margaret \_\_\_\_\_ being a known prostitute, in violation of State Regulations No. 20, Rule 4 \*\*\*\*\*.

CHARGE 3

"On or about March 27th, 1942, you did permit, allow or suffer in and upon the licensed premises \*\*\*\*\* Josephine \_\_\_\_\_, a known prostitute, in violation of State Regulations No. 20, Rule 4, \*\*\*\*\*.

CHARGE 4

"On or about March 13, 1942, you did permit, allow or suffer in or upon the licensed premises certain female colored entertainers, the names of whom are not known, to accept alcoholic beverages for the purposes of consumption, which said alcoholic beverages were purchased by a customer then in or about the premises, said colored female entertainers being employees of the licensee, in violation of State Regulations No. 20, Rule 22, which provides as follows:

- '22. No plenary or seasonal retail consumption licensee shall allow, permit or suffer any female employed on the licensed premises to accept any food or beverage, alcoholic or otherwise, at the expense of or as a gift from any customer or patron.'

CHARGE 5

"On or about March 20, 1942, you did permit, allow or suffer in or upon the licensed premises one Betty Bilowith, wife of the licensee, to accept alcoholic beverages for the purpose of consumption, which said alcoholic beverages were purchased by one Arnold \_\_\_\_\_, a customer then in or upon the licensed premises, said Betty Bilowith being an employee

of the licensee, in violation of State Regulation 20, Rule 22, which is heretofore set forth in Charge 4 of these charges and is made part of CHARGE 5 as if set forth verbatim herein."

At the hearing herein, Investigator Hulin of the Department of Alcoholic Beverage Control testified that, on March 13, 1942, he saw Margaret \_\_\_\_\_ leave the licensed premises with two men. He testified also that on March 20, 1942 he was seated at the bar in the licensed premises when Margaret \_\_\_\_\_ came from the rear sitting room and sat next to him; that, at her suggestion, they went to a booth in the rear sitting room where Mrs. Betty Bilowith served them with alcoholic beverages. Hulin further testified that, following this service, Margaret advised the witness that her charge for "sexual intercourse" would be "five dollars and a dollar and a half for the room this time." Shortly after this conversation occurred, detectives from the Passaic Police Department entered the licensed premises and took Margaret \_\_\_\_\_ to Police Headquarters.

The licensed premises are situated on the ground floor of a building, the upper floors of which are operated as a hotel by another individual. On March 27, 1942 detectives of the Passaic Police Department found Josephine \_\_\_\_\_ and Arnold \_\_\_\_\_ in a room in this hotel. The room had been rented to "Mr. & Mrs. Smith." At the hearing, Josephine \_\_\_\_\_ testified that, earlier on the same evening, she had been introduced to Arnold in the licensed premises by Betty Bilowith, the wife of the licensee. This witness further testified that she visited the licensed premises on every Friday night from some date in January 1942 to March 27, 1942; that, on each visit, she met men in the tavern, solicited them and took them to a room in the hotel located in the same building. Detective Bingham of the Passaic Police testified that, prior to March 27, 1942, he had seen both Margaret and Josephine in the licensed premises at least a dozen times.

On behalf of appellant, Charles Bilowith and Betty Bilowith testified that they had no knowledge that either Margaret or Josephine was a prostitute and that they had no reason to believe from the conduct of these women on the licensed premises that either was a prostitute. Betty Bilowith denied that she introduced Arnold to Josephine on March 27, 1942 but admitted that she had had a drink with them on that date. Charles Bilowith and his wife testified that they had been in Florida, on vacation, from January 27, 1942 to March 10, 1942 and had left the premises in charge of a bartender. Four other witnesses testified that the premises were conducted in a proper manner.

From the evidence there can be no doubt of the fact that both of the women who were permitted on the licensed premises were prostitutes. The only question is whether they were "known prostitutes" within the meaning of that term as used in the State Regulations.

In Re Foster and Clauss, Bulletin 248, Item 4, Commissioner Burnett said:

"Mere proof that a prostitute was present on the licensee's premises is insufficient to establish the offense charged. There must, in addition, be adequate proof that the licensees knew that she was a prostitute and nevertheless acquiesced in her presence at the premises. See Re Kass, Bulletin, 239, Item 1:

"Unless the offense can be tied in or brought home to the licensees by their knowledge or by acquiescence, which implies knowledge, I cannot, in fairness, hold them responsible. Such a thing might happen in the best regulated club. The mere presence of a prostitute or other person of ill repute on licensed premises does not make out a case."

In general, I agree with the principle set forth in the cited case. However, the evidence in the present case shows that both of these women were frequent patrons of the licensed premises. Each of them was present on at least a dozen occasions. One of them admits that, in the licensed premises, she solicited men for immoral purposes every week for a period of more than two months. In view of all the evidence, it strains credulity to believe that the true character of these women was unknown to the licensee, his agents or employees. There can be no denying that the women in question were known to be prostitutes by the patrons of the place. Licensees may not avoid their responsibility for the conduct of their premises by merely closing their eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises. Fortunately, most licensees do so. In this case the licensee knew, or should have known, the notorious facts known to his customers. The word "known" as used in Rule 4 of Regulations No. 20 is not restricted to the provable knowledge of the licensee where the notoriety of the condition and the continuity of the conduct charges the licensee with knowledge as in this case.

I find that the licensee, Charles Bilowith, permitted known prostitutes and persons of ill-repute upon his licensed premises and, hence, I affirm the finding of guilt as to Charges (1), (2) and (3).

The evidence of employment of the female colored entertainers mentioned in Charge (4) is meager and is denied by the licensee. No evidence was presented to sustain Charge (5). I deem it unnecessary, however, to pass upon these charges because the finding of guilt as to the first three charges is clearly sufficient to warrant an affirmation of the action of respondent in revoking the license. A license is a privilege. When the privilege is abused by permitting prostitutes and persons of ill-repute upon the licensed premises, the only proper penalty is revocation of the license. Hence, I shall affirm the action of respondent in revoking the license held by Charles Bilowith.

It follows that the action of respondent in denying the applications filed by appellant, Mario V. Sanson, must also be affirmed. There was no license which could be transferred or renewed.

Accordingly, it is, on this 8th day of September, 1942,

ORDERED, that the appeals herein be and the same are hereby dismissed.

ALFRED E. DRISCOLL,  
Commissioner.

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

In the Matter of an Applica- )	
tion to Remove Disqualification )	
because of Conviction of a )	CONCLUSIONS
Crime pursuant to R.S. 33:1-31.2. )	AND ORDER
Case No. 228 )	
- - - - - )	

BY THE COMMISSIONER:

Petitioner, in this proceeding, prays that his disqualification, resulting from the conviction of a crime, be lifted pursuant to R. S. 33:1-31.2.

In 1933 petitioner was sentenced to an indeterminate term in a Reform School for burglary, entering, larceny and receiving stolen goods. At that time he was twenty-two years of age. The crime involved a series of thefts of cigarettes and like items.

At the hearing, petitioner testified that he took no part in the actual stealing of the items. His part in the crime was selling the loot to storekeepers on his milk route.

On February 28, 1942 petitioner was found guilty of violating a local ordinance. The charge was gambling.

At the hearing, petitioner produced three character witnesses -- an attorney who has known him for six years, a friend and patron of his place of business who has known him for eight years, and a representative from the parole office to which petitioner reported. The first two mentioned witnesses testified that petitioner bears a splendid reputation in the community in which he resides; that he is, and has been, active in civic and charitable organizations and sporting clubs, having been elected to office in at least two of these organizations. They further testified that petitioner is highly regarded and respected by the people in his community. The representative from the parole office where petitioner periodically reported after his parole from Reform School gives him a splendid recommendation. The latter witness stated that all of petitioner's parole officers held him in high regard and had long since arrived at the conclusion that the petitioner had completely rehabilitated himself. Petitioner is alleged to be devout in his religion and is a regular church attendant.

It is apparent that petitioner has paid for the mistakes of his youth.

The petitioner appears never to have been in any trouble before the commission of this crime. He created a favorable impression upon the Hearer who heard his application. I am further impressed by the parole officer's recommendation and the evidence as to petitioner's civic and charitable work and religious constancy in his community.

The only indication that petitioner may not have been leading an honest and law-abiding life for the five years last past is his conviction of gambling in 1942. This was a violation of a local ordinance. This charge arose out of a friendly poker game participated in by a group of petitioner's friends and was not of a

commercial nature. I do not believe that this single lapse -- not a "crime" -- overcomes petitioner's otherwise clear record and the favorable testimony of his character witnesses.

In view of the foregoing, I conclude that petitioner has led an honest and law-abiding life for the five years last past and that his association with the liquor industry will not be prejudicial to the interest of the public or of that industry. His disqualification will be lifted.

Accordingly, it is, on this 10th day of September, 1942,

ORDERED, that petitioner's statutory disqualification because of a conviction of a crime be and the same is hereby lifted in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL,  
Commissioner.

5. MORAL TURPITUDE - CRIME OF MANSLAUGHTER INVOLVED MORAL TURPITUDE.

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

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

CONCLUSIONS  
AND ORDER

Case No. 237.  
- - - - - )

BY THE COMMISSIONER:

Petitioner in this proceeding prays that his disqualification resulting from a conviction of manslaughter be lifted pursuant to R. S. 33:1-31.2. The crime of manslaughter normally involves moral turpitude.

Following his conviction petitioner, on August 9, 1937, was sentenced to three years' imprisonment and the payment of a fine of \$1,000.00. Almost immediately after the imposition of this sentence the operation of the same was suspended and petitioner was placed on probation for the same period of time. Likewise, the payment of the fine was waived.

It appears that petitioner's conviction followed a shooting episode which took place in a tavern when he sought to defend himself against an attack which he believed an intruder was about to level against him. The intruder in question had apparently forced his way into the tavern after it had been closed for the night. Petitioner mistakenly thought that he saw a gun in the visitor's hand and thereupon states he secured a gun from behind the bar for his own protection. A colored girl in the tavern grabbed petitioner's hand and his gun went off, the bullet striking the intruder, who later died as a result of the bullet wound.

At the hearing petitioner produced three character witnesses -- a rabbi, a lawyer and a business man. All three testified that they have known the petitioner for at least five years, and live in the immediate neighborhood of the petitioner. The witnesses further

testified that petitioner has a fine home, is a splendid husband and father, a hard worker, and is regarded in his community as law-abiding, well-behaved and of excellent character.

Petitioner is presently employed in defense work, and prior to this employment was employed as a collection agent by a firm for fifteen years. In the pursuit of his duties as such agent, it was necessary for him to handle large sums of money.

In 1938 petitioner was arrested for assault and battery, but the charge was dismissed when it was found that petitioner had had nothing to do with the fight but had coincidentally been passing at the time of the fracas and was arrested, together with a number of others. Aside from this occurrence, petitioner's fingerprint return shows a clean record, and that there are no pending complaints or investigations against him.

From all of the foregoing, I am satisfied that petitioner has been leading an honest and law-abiding life for at least five years last past, and that his association with the alcoholic beverage industry will not be contrary to public interest. Hence petitioner's disqualification will be removed.

Accordingly, it is, on this 10th day of September, 1942,

ORDERED, that petitioner's statutory disqualification because of the conviction of a crime be and the same is hereby lifted, in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL,  
Commissioner.

6. DISCIPLINARY PROCEEDINGS - SUBLETTING OF LICENSE - PERMITTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - FAILURE TO NOTIFY ISSUING AUTHORITY OF NON-LICENSEE'S INTEREST IN BUSINESS CONTRARY TO R. S. 33:1-34 - 20 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against

RAMSEY GOLF & COUNTRY CLUB, INC.,  
Lakeside Drive,  
Ramsey, New Jersey,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-11 for the fiscal year 1941-2, and now holder of Plenary Retail Consumption License C-11 for the current (1942-3) period, issued by the Mayor and Council of the Borough of Ramsey.

John Warhol, Jr., Esq., Attorney for Defendant-Licensee.  
William F. Wood, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant has entered a guilty plea to the following charges:

- (1) Failing to file written notice with the Mayor and Council of the Borough of Ramsey of the interest of Ernest E. Harman in its licensed business within ten days after the latter acquired the same, contrary to R. S. 33:1-34.

- (2) Aiding and abetting Ernest E. Harman, a non-licensee, to exercise the rights and privileges of its license, contrary to R. S. 33:1-26 and in violation of R.S. 33:1-52.

This proceeding, although instituted during the last licensing term which expired June 30, 1942, does not abate but remains effective against the renewal license which has been issued to the defendant for the current term.

The defendant, a corporation of the State of New Jersey, held a plenary retail consumption license for the premises for the 1941-42 license period. The record discloses that the defendant "club" is an adjunct to a real estate development, and that its club facilities are used exclusively by home owners in the development, their friends and guests. In September of 1941, the defendant employed Ernest E. Harman to operate the licensed premises under an arrangement whereby the latter assumed full responsibility for the management of the licensed business and agreed to pay all bills incident thereto and, in return, received the profits thereof, plus a fixed monthly salary. It is to be noted that Harman, in addition to agreeing to pay the expenses incident to the operation of the bar and the sale of alcoholic beverages, also agreed to pay for all help, light and heat for the licensed building, as well as all other expenses, and was required to post a deposit of \$500.00 to secure the payment of the same.

It is clear that the defendant, by its agreement, permitted Harman to conduct the licensed business as his own, under the color and guise of its license.

A licensee who deliberately farms out its license to others for the financial gain of itself or an affiliate perpetrates a serious fraud upon the State which strikes at the very root of the liquor licensing system. Re Business Men's Associates, Inc., Bulletin 348, Bulletin 348, Item 6.

In the instant case, however, it does not appear that the defendant deliberately chose to violate the law or that the arrangement contemplated any financial gain to the licensee. On the contrary, the violation appears to have been the result of the defendant's misunderstanding both as to the law and the relationship created by its agreement with Harman. Nor does the defendant appear, in fact, to have profited from the ill-advised agreement, other than by being relieved of its responsibility for the management and operation of the "club's" facilities. Such other advantages as may have arisen as a result of the agreement appear to have accrued to the affiliate development company by the increased attractiveness of its land for prospective home owners, due to the presence of the "club" and its facilities.

Upon being advised of the impropriety of its action, the above mentioned agreement was terminated and the illegal situation immediately corrected.

The facts in the instant case are distinguishable from those in the case of Re Business Men's Associates, Inc., supra, where the penalty was revocation. Cf. Laurence Brook Country Club, Inc., Bulletin 335, Item 6.

Under the circumstances, the defendant's license will be suspended for twenty days.

Accordingly, it is, on this 10th day of September, 1942,

ORDERED, that Plenary Retail Consumption License C-11, issued for the current fiscal year by the Mayor and Council of the Borough of Ramsey to Ramsey Golf & Country Club, Inc., Lakeside Drive, Ramsey, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 A.M. September 14, 1942, and terminating at 2:00 A.M. October 4, 1942.

ALFRED E. DRISCOLL,  
Commissioner.

7. DISCIPLINARY PROCEEDINGS - FRONT - AIDING AND ABETTING NON-LICENSEE (DISQUALIFIED BECAUSE OF RESIDENCE) TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - SUPPRESSION OF MATERIAL FACTS IN APPLICATION FOR LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR 30 DAYS EFFECTIVE IF, AS AND WHEN LICENSEE RESUMES BUSINESS OR OBTAINS ANOTHER LICENSE.

DISCIPLINARY PROCEEDINGS - STATE PERMITTEES - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - PERMITS REVOKED.

In the Matter of Disciplinary Proceedings against SMALLS PARADISE OF N. J., INC., T/a SMALLS PARADISE, Rifle Range Road, Pointville, New Hanover Township, P. O. Browns Mills, N. J., Holder of Plenary Retail Consumption License C-6, for fiscal year 1941-42 and holder of Plenary Retail Consumption License C-4 for fiscal year 1942-43, issued by the Township Committee of the Township of New Hanover, New Jersey.

In the Matter of Disciplinary Proceedings against VIVIAN M. HOGAN, Rifle Range Road, Pointville, New Hanover Township, P.O. Browns Mills, N. J.,

Holder of Employment Permit No. 4180 for fiscal year 1941-42, issued by the State Commissioner of Alcoholic Beverage Control.)

In the Matter of Disciplinary Proceedings against GENE TYLER, 211 West 125th Street, New York City,

Holder of Employment Permit No. 8622 for fiscal year 1941-42, issued by the State Commissioner of Alcoholic Beverage Control.)

In the Matter of Disciplinary Proceedings against EDWIN A. SMALLS, Rifle Range Road, Pointville, New Hanover Township, P.O. Browns Mills, N. J.,

Holder of Employment Permit No. 8487 for fiscal year 1941-42, issued by the State Commissioner of Alcoholic Beverage Control.)

Frank S. Farley, Esq., Attorney for Michael Pascarelli, former stockholder in defendant corporation. William F. Wood, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

There were served upon defendant-licensee charges which, in substance, alleged:

CONCLUSIONS AND ORDER

(1) That, between April 4, 1941 and May 20, 1941, Michael Pascarelli, defendant's predecessor in interest, knowingly aided and abetted Edwin A. Smalls, a non-licensee, to exercise the rights and privileges of his license, contrary to R. S. 33:1-26;

(2) That, from May 20, 1941 to April 7, 1942, it knowingly aided and abetted Edwin A. Smalls, a non-licensee, to exercise the rights and privileges of its license, contrary to R. S. 33:1-26.

Defendant-licensee was also required to show cause why its license should not be cancelled, as improvidently issued, because Edwin A. Smalls, the owner, directly or indirectly, of more than 10% of its stock, lacked the necessary residential qualification of an individual licensee.

There was also served upon each of the defendant-permittees a charge alleging that he or she knowingly aided and abetted Edwin A. Smalls, a non-licensee, to exercise the rights and privileges of the license issued to Smalls Paradise of N. J., Inc.

At the hearing held on May 11, 1942, none of the defendants appeared. The attorney for Michael Pascarelli appeared for the purpose of explaining that his client was then arranging to purchase the interest of Edwin A. Smalls in the licensed premises.

A written statement given by Edwin A. Smalls to our investigators on March 9, 1942 was introduced into evidence at the hearing. Smalls, then a resident of the City of New York, admitted therein that for about a "month or so" in the Spring of 1941 he and Pascarelli operated the licensed business as partners under a license then held by Pascarelli; that, after they had decided to form a corporation, he learned that he could hold only ten per cent of the stock of the corporation because he was not a resident of New Jersey; that he caused ten shares (equivalent to 10% of the total stock) to be placed in his name and ten shares in the name of each of the following persons: Dorothy Smalls, Charles Smalls, Gene Tyler and Vivian Hogan; that he owned and controlled these fifty shares of stock and that the certificates were in his possession. Statements given by each of the permittees to our investigators were also introduced into evidence. It appears therefrom that each permittee admits that the stock issued in his or her name was owned by Edwin A. Smalls.

I find defendant-licensee and defendant-permittees guilty as charged.

Since the date of the hearing, proofs have been submitted that there has been a bona fide sale of all of the stock of the corporation to one Anthony Martino. An affidavit received from the secretary of Smalls Paradise of N. J., Inc. discloses that the stock is now held by the following individuals:

Anthony Martino,	98 shares
Nettie Janasky,	1 share
Joseph Farace,	1 share

All of the above appear to be fully qualified.

As to penalty: The charges against defendant-licensee were brought against its license issued for the fiscal year 1941-42. Hence, this proceeding does not come within the ruling as to increased penalties to be imposed where a "front" is created or continued after July 1, 1942. Bulletin 512, Item 9.

While the defendant-licensee has thus escaped the revocation of its license, a substantial penalty must be imposed in view of the persistent and continued character of the defendant's attempt to "beat" the New Jersey law.

At the present time, the unlawful situation appears to have been corrected by the transfer of all of the stock of the corporation to persons other than Smalls and Pascarelli. I shall suspend the license now held by the corporation for a period of thirty days.

In view of the above disposition, affiliate proceedings to cancel the license are dismissed. Re A. M. Home Stores, Inc., Bulletin 512, Item 6.

It appears from our records that the permittees, Vivian M. Hogan, Gene Tyler and Edwin A. Smalls have not renewed their employment permits for the current fiscal year. Each of these permits was issued because the respective permittees had not been residents of New Jersey for five years. Under the circumstances, I shall revoke the permits they held for the fiscal year 1941-42. This will disqualify each of these individuals from working for a New Jersey licensee for a period of two years. Re Gardella, Bulletin 507, Item 7.

Accordingly, it is, on this 14th day of September, 1942,

ORDERED, that Plenary Retail Consumption License C-4, issued to Smalls Paradise of N. J., Inc., t/a Smalls Paradise, for the current fiscal year, for premises on Rifle Range Road, Pointville, New Hanover Township, by the Township Committee of the Township of New Hanover, be and the same is hereby suspended for a period of thirty (30) days. The licensed premises have recently been taken over by the Federal Government and no business is being conducted under the license at the present time. The effective date of the suspension imposed herein will be fixed by further order if and when the licensee resumes business or obtains another license. It is further

ORDERED, that Employment Permit No. 4180 issued to Vivian M. Hogan, Employment Permit No. 8622 issued to Gene Tyler, and Employment Permit No. 8487 issued to Edwin A. Smalls, for the fiscal year 1941-42, by the State Commissioner of Alcoholic Beverage Control, be and the same are hereby revoked.

ALFRED E. DRISCOLL,  
Commissioner.

8. LICENSEES - INDUCTION INTO MILITARY SERVICE - APPLICATIONS FOR RENEWAL OR TRANSFER MAY BE SIGNED BY AN ATTORNEY-IN-FACT HOLDING APPROVED POWER OF ATTORNEY - HEREIN THE NECESSARY PROVISIONS TO BE INCLUDED IN SUCH POWER.

September 14, 1942

Victor De Martini, Borough Clerk,  
Northvale, N. J.

Dear Sir:

I have your letter of September 3rd concerning the sale of a licensed business by one of your licensees who is about to be inducted into military service.

You advise that negotiations for the sale are now pending but may not be completed prior to the licensee's entry into service. In such event, the licensee may, by power of attorney, delegate authority to an attorney-in-fact to effect a transfer of the liquor license on behalf of the grantor-licensee. No opinion is expressed as to whether the attorney may, pursuant to the power, validly pass title to any of the other assets of the licensed business. As to that, the licensee should consult his own attorney. All that is intended to be presently conveyed is that pursuant to the recent amendment to R. S. 33:1-25 (reprinted in Bulletin 512, Item 2) all applications, whether for renewal, or transfer from person to person or place to place, may be signed by an attorney-in-fact holding a power of attorney in form approved by me.

The power should contain the address of the licensed premises and should include the following:

1. A statement that the licensee-grantor has been or is about to be inducted into military service.
2. A general power to manage and conduct the licensed business during the licensee's absence.
3. An authorization to apply for renewals of the license as well as transfers thereof from person to person or place to place.
4. An authorization to do everything necessary to comply with all local, state and Federal regulations and laws applicable to the conduct of the licensed business.
5. A statement that the licensee ratifies and confirms the acts of the attorney done pursuant to the power, so far as the enforcement of the Alcoholic Beverage Law is concerned.

In addition, the power may provide for any other lawful duties and responsibilities of the attorney, as to which, however, I shall express no opinion nor give any approval.

I point out that the attorney must have all of the necessary qualifications of a licensee except that of five years' residence in this state. If not such a resident, however, the attorney must, if employed in any capacity on the licensed premises, first obtain a special permit from this Department authorizing such employment.

A copy of the power is retained by me and, when approved, a copy is also filed with the clerk of the local issuing authority. In addition, each of the applications filed by the attorney should have attached a copy of the power.

Very truly yours,

*Alfred E. Triscoll*  
Commissioner.

CHECKED BY No. 7