

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 838

April 4, 1949

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 838

April 4, 1949

1. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary)
Proceedings against)

ANTHONY DiGIROLAMO)
T/a ARGONNE WINE & LIQUOR STORE)
121-123 So. Warren Street)
Trenton 9, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-222, issued by the)
Board of Commissioners of the)
City of Trenton.)

John M. Davis, Jr., Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to charges alleging that he sold, served and delivered alcoholic beverages to two minors and permitted the consumption of alcoholic beverages by the minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The minors mentioned in the charges were each eighteen years of age at the time of the violation charged herein. It appears from the evidence that, accompanied by two other soldiers, one of whom was also a minor, they entered defendant's premises at about 10:30 p.m. on Wednesday, November 3, 1948; that one of the minors mentioned in the charges purchased two glasses of beer at the bar and brought the glasses of beer to a booth where the party was seated and that the adult soldier also purchased a glass of beer at the bar. The testimony of the four servicemen is in agreement that the two minors in question and adult companion each consumed a glass of beer. William J. ----, the other minor, testified that, although he did not have anything to drink, he did, however, observe each of his three companions drinking a glass of beer.

Sergeant Williamson, a member of the Military Police, testified that he apprehended the four servicemen as they were leaving the premises operated by defendant in order to ascertain whether or not they had proper passes.

Defendant testified that he was not on duty on the evening of November 3, 1948. Four persons employed by defendant testified that they were present at the time but they observed only three soldiers on the licensed premises. The witnesses further testified that the soldiers had sandwiches (which is admitted by the soldiers) but did not have anything to drink while on defendant's licensed premises. George Nemeth, the bartender on duty during the evening, testified that he did not sell or serve any beer to soldiers. He did say, however, that he remembered seeing three soldiers but that he did not "pay any attention to them". In contrast to the positive evidence of the soldiers, the testimony of defendant's employees was, in many respects, uncertain and unconvincing.

I am satisfied, after consideration of all the evidence presented in this case, that each of the two minors mentioned in the charges was served with and permitted to consume a glass of beer on defendant's premises. I find defendant guilty of the charges preferred herein.

Defendant has no previous adjudicated record. In view of that fact and in the absence of aggravating circumstances in the instant case, I shall suspend the license for a period of ten days. Cf. Re Modrowski, Bulletin 582, Item 1.

Accordingly, it is, on this 22nd day of March, 1949,

ORDERED that Plenary Retail Consumption License C-222, issued by the Board of Commissioners of the City of Trenton to Anthony DiGirolamo, t/a Argonne Wine & Liquor Store, for premises 121-123 So. Warren Street, Trenton, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. March 29, 1949, and terminating at 2:00 a.m. April 8, 1949.

ERWIN B. HOCK
Director.

2. WHOLESALE LICENSEE - REFUSAL OF RECTIFIER AND DISTRIBUTOR TO SELL A NATIONALLY ADVERTISED BRAND OF LIQUOR TO WHOLESALER FOUND TO BE NEITHER DISCRIMINATORY NOR ARBITRARY UNDER CIRCUMSTANCES OF CASE. - PETITION FOR ORDER UNDER PROVISIONS OF R. S. 33:1-93.3 DENIED.

In the Matter of a Petition by)

Boller's Beverages, Inc.,)
441 East Jersey Street,)
Elizabeth, New Jersey,)

Pursuant to the Provisions of)
R.S. 33:1-93.1 to R.S. 33:1-93.5)
inclusive (P.L. 1942, c. 264).)

- - - - -)

On Petition
CONCLUSIONS

Samuel J. Marantz, Esq., Attorney for Petitioner.
Stanley S. Casden, Esq., Attorney for Schenley Distributors, Inc.

BY THE DIRECTOR:

Petitioner is a duly licensed wholesaler of alcoholic beverages in the State of New Jersey. Schenley Distributors, Inc. is a rectifier and distributor of a nationally advertised brand of liquor known as "Schenley Reserve". Some of the testimony herein refers to "Schenley Black Label" but, for the purposes of this decision, it has been admitted that "Schenley Black Label" is the same product as "Schenley Reserve".

The petition herein recites that on November 26, 1948, petitioner sent a purchase order by registered mail to Schenley Distributors, Inc., which order called for:

- 425 cases 5ths Schenley Reserve Round Bottles
- 75 " pts. " " " "
- 50 " 5ths " " Decanter bottles,

accompanied by a certified check of petitioner to the order of Schenley Distributors, Inc., in the sum of \$17,000.00. The petition further recites that on December 3, 1948, the certified check was returned with a letter which was tantamount to a refusal to sell the aforesaid merchandise to petitioner. The aforesaid facts are not disputed.

Pursuant to the statute (P.L. 1942, c. 264), petitioner demanded a hearing upon its petition to determine whether such refusal to sell was arbitrary or not. Presumably, although not specifically requested, petitioner seeks the entry of an order pursuant to R.S. 33:1-93.4.

At the hearing the attorney for Schenley Distributors, Inc. contended (1) that P.L. 1942, c. 264, is unconstitutional; (2) that no relief could be afforded petitioner because the State Commissioner (now Director) of Alcoholic Beverage Control had not adopted rules and regulations pursuant to R. S. 33:1-93.5; and (3) that the refusal to sell was not arbitrary.

As to (1): I have no jurisdiction to pass upon the constitutionality of the act in question. I must presume that the Act is constitutional unless a court of competent jurisdiction rules otherwise.

Point (2) is without merit. R.S. 33:1-93.5 provides:

"The State Commissioner of Alcoholic Beverage Control shall adopt and promulgate such rules and regulations as may be necessary to carry out and insure compliance with the provisions of this act." (underscoring added).

No rules or regulations have been adopted or promulgated pursuant to the quoted provision, but adoption and promulgation of rules and regulations are not prerequisites of relief under P.L. 1942, c. 264.

The question for determination is whether or not the refusal to sell was arbitrary.

R. S. 33:1-93.1 provides:

"There shall be no discrimination in the sale of alcoholic liquors by distillers, importers, and rectifiers of nationally advertised brands of alcoholic liquors to duly licensed wholesalers of alcoholic liquors in this state."

R.S. 33:1-93.2 provides:

"In the event any distiller, importer, or rectifier shall refuse to sell to any individual wholesaler any amount of alcoholic liquor or comply with the provisions of this act (sections 33:1-93.1 to 33:1-93.5), then the wholesaler shall petition the Commissioner of Alcoholic Beverage Control setting forth the facts and demanding a hearing thereon to determine whether such refusal to sell is arbitrary or not."

R.S. 33:1-93.3 provides:

"If the Commissioner of Alcoholic Beverage Control is satisfied with the ability of the wholesaler to pay for such merchandise as ordered, he shall order the distiller, importer, or rectifier to complete said sale of alcoholic liquor to the wholesaler."

The petitioner seems to contend that it has established discrimination merely by showing its ability to pay for the merchandise ordered. "Discrimination" is defined in Webster's Dictionary (New International, Second Edition, Unabridged) as "Act of discrimination or state of being discriminated ... A distinction, as in treatment; esp. an unfair or injurious distinction." If the Legislature had intended to use the word "discrimination" in the narrow sense contended by petitioner, then it would have been unnecessary to provide for a hearing "to determine whether such refusal to sell is arbitrary or not" as provided for in R.S. 33:1-93.2. "Legal discrimination" is defined in numerous cases. Thus, in Amodio v. Board of Commissioners, 133 N.J.L. 220, at p. 226, the Court says:

"The inquiry is whether there is discrimination against anyone within the prescribed limits of the regulation. Special

burdens are often necessary for general benefits; and if the restrictions operate alike upon all persons and property under the same circumstances and conditions there is no just ground of complaint."

In Board of Trade v. U.S., 314 U.S. 534, at p. 546, the Court says:

"Whether a preference or advantage or discrimination is undue or unreasonable or unjust is one of those questions of fact that have been confided by Congress to the judgment and discretion of the commission ***."

See also the following cases: Wagman v. Trenton, 102 N.J.L. 492; Spiro v. Union City, 130 N.J.L. 1; (aff'd 130 N.J.L. 496); Starkey v. Atlantic City, 132 N.J.L. 27; Packard Bamberger v. Board of Pharmacy, 134 N.J.L. 381 (aff'd 135 N.J.L. 282); Whitfield v. Ohio, 297 U.S. 431; Louisville Gas & Elec. Co. v. Coleman, 277 U. S. 32; Carmichael v. Gulf States Paper Corp., 301 U.S. 495; Koch v. River Port Pilot Commission, 330 U.S. 552.

The evidence herein shows that petitioner sold thirty cases of Schenley Reserve in 1942, and three hundred nine cases of Schenley Reserve in 1943. It has not sold any of said products for more than five years last past. The President of Boller's Beverages, Inc. testified that the item was "a dead dog in 1943. It was a dead item. You couldn't give it away. In 1941, 1942 and 1943 it was very hard to sell." He admits that his Company is selling Carstairs whiskey, which he alleges is not an item competitory with Schenley Reserve because it is cheaper; and also Philadelphia whiskey which sells at the same price as Schenley Reserve and concerning which he says "we get all we want." Leo Sesselman, the Manager of Boller's Beverages, Inc., admitted that Schenley had offered to sell to his Company for distribution in New Jersey "Gibson XXXX Blended Whiskey", a nationally advertised product, and "Melrose Rare Blended Whiskey". He testified that the Gibson line had been refused and that the Melrose line was being considered.

The District Manager of Schenley Distributors, Inc. testified that in 1942 and 1943 twenty-three distributors were selling Schenley products in New Jersey; that at the present time the number of these distributors has been reduced to ten; that most of these distributors sell on a State-wide basis whereas Boller distributes only within a thirty-mile radius of Elizabeth, and that six or seven of the distributors who now handle Schenley products distribute in the same area of the State in which Boller distributes. Newton Kook, Assistant Sales Director of the Schenley companies, testified "We are today over-distributed and, the more men you put out the less it is per man."

Apparently Schenley Reserve did not hold in 1943 its present high position in the New Jersey market, which has been built up by Schenley advertising and by the efforts of the wholesalers who are now distributing the product. The petitioner, which has not sold Schenley Reserve for at least five years, cannot, in my opinion, claim that there is any unjust discrimination against it because Schenley Distributors, Inc. refuses to sell to it this particular item. Under all the circumstances I conclude that the refusal to sell was not arbitrary. The petition, so far as it relates to the entry of any further order, is, therefore, denied.

ERWIN B. HOCK,
Director.

Dated: March 22, 1943.

3. DISCIPLINARY PROCEEDINGS - CHARGE THAT LICENSEE HINDERED INVESTIGATION DISMISSED - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - PRIOR RECORD - LICENSE SUSPENDED FOR 35 DAYS.

In the Matter of Disciplinary Proceedings against)

THE PROGRESSIVE DEMOCRATIC CLUB OF THE 8th WARD, CAMDEN, 1009 Ferry Avenue, Camden, New Jersey,)

CONCLUSIONS AND

Holder of Club License CB-4, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)

ORDER

Frank M. Lario, Esq., Attorney for Defendant-Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to charges alleging that it (1) sold, served and delivered, and suffered and permitted the sale, service and delivery of alcoholic beverages on its licensed premises on Sunday after 2 a.m., in violation of a local ordinance of the City of Camden prohibiting any such activity; and (2) hindered an investigation by investigators of the Department of Alcoholic Beverage Control, in violation of R.S. 33:1-35.

An ABC agent testified that at 1:55 a.m. on Sunday, October 10, 1948, he and another agent stationed themselves opposite defendant's premises and kept the outside of the premises under observation until about 2:25 a.m. Having observed about eighteen people enter the front door of defendant's premises between 2:05 a.m. and 2:25 a.m., the agents summoned two local police officers, who arrived about 2:45 a.m. This agent testified that, as he and one of the police officers went up the stoop which led to the front door, a person who was on the stoop pulled the door, which had been open, and thus caused the door to close. Thereupon the agent rang the bell and "someone came to the front door, pulled back the shade and I told them that the ABC was there, to open the door." The door was not opened from the inside, and the agent continued to ring the bell. A police officer then announced that the police were there and that, if the door was not opened, he would "break it in". The agent further testified that, after a lapse of three or four minutes, the door was opened and he and the police officer entered the premises. The premises were then in total darkness. The agent testified that, after the lights had been put on, he observed ten or twelve people in the front room, which is described as a service room, and a number of people in a rear room, which is described as the barroom. The agent further testified that in the barroom "there were about eighteen bottles, partially filled with beer. Some were partially filled and others were completely filled with the caps removed. These beverages were ice cold. And there were approximately twelve mixed drinks on the bar. And they were also ice cold. *** There were some other bottles under the tables and around the premises. There was one, I recall one quart bottle with a cap removed, full, right under the table in the barroom. That was ice cold - one quart bottle of beer.*** There were some empty bottles on the bar, some empty glasses on the bar, and there were some glasses on the bar partially filled with beer!"

The aforesaid testimony is substantially corroborated by the other agent, and the two local police officers who entered defendant's premises. Concerning the condition of the beer glasses, Sergeant Keefe,

of the Camden Police Department, testified that "some had beer in them. There was froth on them, kind of white. They looked as if they had just been filled."

The vice-president of defendant organization testified that he was tending bar on the morning of October 10, 1948, and that he did not serve or sell any alcoholic beverages after the president of the organization told him that it was then 2 a.m. There was no clock in the licensed premises, and the vice-president did not have a watch. Despite the evidence of the president and the vice-president that no alcoholic beverages were sold, served or delivered after 2 a.m., and that the vice-president was merely cleaning up when the agents entered, I am satisfied from all the circumstances of the case that alcoholic beverages were sold, served and delivered after 2 a.m. Hence I find defendant guilty as to charge (1).

As to charge (2): There is no evidence that the person who closed the door, or that the other person who pulled back the shade when the agent first identified himself, were officers or agents of defendant club. Neither is there any probative evidence as to when the lights were put out or by whom or for what purpose. The president of the club testified that he heard the bell ringing but did not go to the door until he heard someone knocking, whereupon he opened the door and the agent and policemen entered. He further testified that "Oftentimes if it is after hours, if the buzzer is pushed we ignore it. If it continues, we go and find out what is the matter with the person." Under all the circumstances, I conclude that the evidence is not sufficient to establish the licensee's guilt as to the second charge. This charge is, therefore, dismissed.

The minimum suspension for a first violation arising from the sale of alcoholic beverages during prohibited hours is fifteen days. However, defendant's license was previously suspended for twenty days, effective September 10, 1947, after it had pleaded non vult to a charge of selling alcoholic beverages during prohibited hours and serving beverages to a woman directly over a bar. See Bulletin 776, Item 7. In addition, defendant's license was cancelled in 1944, after a finding of guilty to charges of falsification of its application. See Bulletin 672, Item 3.

Under all the circumstances, I shall suspend defendant's license for a period of thirty-five days.

Accordingly, it is, on this 22nd day of March, 1949,

ORDERED that Club License CB-4, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to The Progressive Democratic Club of the 8th Ward, Camden, for premises 1009 Ferry Avenue, Camden, be and the same is hereby suspended for thirty-five (35) days, commencing at 2:00 a.m., March 29, 1949, and terminating at 2:00 a.m., May 3, 1949.

ERWIN B. HOCK
Director.

- 4. DISCIPLINARY PROCEEDINGS - PERMITTING LEWDNESS AND IMMORAL ACTIVITIES (FOUL AND OBSCENE LANGUAGE) - SALE OF ALCOHOLIC BEVERAGES TO INTOXICATED PERSON - LICENSEE, WHILE INTOXICATED, WORKING AS BARTENDER - PERMITTING BUSINESS TO BE CONDUCTED AS A NUISANCE - LICENSE SUSPENDED FOR 80 DAYS.

In the Matter of Disciplinary Proceedings against
 STEPHEN BITTMAN,
 31 Hensler Street,
 Newark 5, New Jersey,
 Holder of Plenary Retail Consumption License C-124, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.
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CONCLUSIONS
 AND
 ORDER

Charles Handler, Esq., Attorney for Defendant-licensee.
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to charges as follows:

- "1. On December 3, 1948, you allowed, permitted and suffered lewdness and immoral activities in and upon your licensed premises, viz., foul and obscene language; in violation of Rule 5 of State Regulations No. 20.
- "2. On December 3, 1948, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to James Byron, a person who was actually or apparently intoxicated, and allowed, permitted and suffered the consumption of alcoholic beverages by such person upon the licensed premises; in violation of Rule 1 of State Regulations No. 20.
- "3. On December 3, 1948, you allowed, permitted and suffered yourself to work in the capacity of bartender on the licensed premises while actually or apparently intoxicated; in violation of Rule 24 of State Regulations No. 20.
- "4. On December 5, 1948 and divers days prior thereto, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance, in that you allowed, permitted and suffered all of the foregoing violations to occur repeatedly, and habitually conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulations No. 20."

The description of the activities at defendant's licensed premises on December 3, 1948, as given by two agents of the Division of Alcoholic Beverage Control, shows that sordid and shameful vulgarity was permitted on defendant's licensed premises. The licensee-defendant was drunk and working (?) on the licensed premises as bartender. He served a customer who was admittedly in an advanced stage of intoxication. The language was foul and obscene. A large part of the language was used by defendant himself.

The only defense is the categorical denial of the defendant. I don't believe him. His other witnesses add nothing to his story, one obviously manufactured out of whole cloth. I find defendant guilty as charged.

There can be no doubt, considering that on June 1, 1948 defendant's license was suspended for forty days on a plea of non vult to charges exactly the same as those herein (Bulletin 806, Item 6), that the licensed premises are conducted in such a way as to be a nuisance.

In the stated situation, complete deprivation of the defendant's license privileges might well be in order. If it were not that the defendant has had a license since 1934 and no adjudicated record other than that referred to above, I would revoke the license outright.

A consideration of all the attendant circumstances leads to the imposition of an eighty (80) day penalty.

Accordingly, it is, on this 23rd day of March, 1949,

ORDERED that Plenary Retail Consumption License C-124, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Stephen Bittman, 31 Hensler Street, Newark, be and the same is hereby suspended for a period of eighty (80) days, commencing at 2:00 a.m., March 30, 1949, and terminating at 2:00 a.m., June 18, 1949.

ERWIN B. HOCK,
Director.

- 5. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PRIOR RECORD WHILE BUSINESS CONDUCTED BY ONE OF TWO PARTNERS NOW OPERATING THE BUSINESS - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

MILTON REINERT & WILLIAM H. MULLICA,
69 Griffith Street,
Salem, New Jersey,

Holder's of Plenary Retail Consumption License C-6, issued by the Common Council of the City of Salem.

CONCLUSIONS

AND

ORDER

Milton Reinert and William H. Mullica, Defendant-licensees, Pro Se. William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that they possessed illicit alcoholic beverages, namely, one 4/5 quart bottle labeled "Seagram's Seven Crown Blended Whiskey" and one 4/5 quart bottle labeled "Sir John Schenley Blended Whiskey", the contents of which were not genuine as labeled, in violation of R.S. 33:1-50.

On December 30, 1948, Storekeeper Gaugers employed by the Alcohol Tax Unit, Internal Revenue Service, Treasury Department, examined fifty-two bottles of alcoholic beverages on defendants'

premises. As a result thereof they seized the two bottles mentioned in the charge when it appeared from their preliminary tests that the contents thereof did not have the characteristics of whiskey. Subsequent analysis by a Federal chemist disclosed that the contents of both bottles which had been found in a cupboard under the bar, did not conform with the description on the labels.

Defendants allege in mitigation that an employee had poured the contents of a fancy jug containing liqueurs into the two seized bottles with the intention of having an "electric jug" made out of the fancy container and with the further intention of taking the seized bottles home for her own use. Defendants further allege that the seized bottles were not displayed for sale. Even assuming that the defendants' allegations are true, nevertheless, licensees are responsible for any "refills" found in their stock of liquor.

Defendant Milton Reinert has a prior record. In March 1940 his license was suspended for three days for selling alcoholic beverages during prohibited hours. In April 1943 his license was suspended for twenty days for selling to minors and suppressing material facts in his application for license. In November 1944 his license was suspended for one day because of a mislabeled beer tap. Defendant William H. Mullica became a partner of Milton Reinert on March 22, 1948. All of the above suspensions were imposed by the local issuing authority.

Considering all the facts of this case, I shall suspend defendants' license for twenty days, less five days for the plea, leaving a net suspension of fifteen days.

Accordingly, it is, on this 23rd day of March, 1949,

ORDERED that Plenary Retail Consumption License C-6, issued by the Common Council of the City of Salem to Milton Reinert and William H. Mullica, for premises 69 Griffith Street, Salem, be and the same is hereby suspended for fifteen (15) days, commencing at 12:01 a.m., March 30, 1949, and terminating at 12:01 a.m., April 14, 1949.

ERWIN B. HOCK,
Director.

6. RETAIL CONSUMPTION LICENSEES - EGG NOG - EASTER DISPENSATION.

March 28, 1949

Joseph Stern, Investigator
Department of Revenue and Finance
Atlantic City, N.J.

Dear Sir:

I have your letter of March 26th.

Traditionally, each year during the Easter season we have permitted consumption licensees to serve egg nog for a limited period of time. I am glad to note that no abuse has developed from this privilege. Hence, the same privilege will be permitted this year, beginning Thursday, April 14, 1949, and ending Monday, April 18, 1949, at midnight, on the understanding that this privilege will be used reasonably and with moderation.

Very truly yours,
ERWIN B. HOCK,
Director.

7. APPELLATE DECISIONS - CORBETT v. NEWARK AND KURSCHNER.

Jean Corbett,)	
Appellant,)	
v.)	On Appeal
Municipal Board of Alcoholic)	
Beverage Control of the City)	CONCLUSIONS and ORDER
of Newark, and Katie and Harry)	
Kurschner,)	
Respondents.)	

James L. Handford, Esq., Attorney for Appellant.
 Thomas L. Parsonnet, Esq., by George B. Astley, Esq., Attorney for Respondent Municipal Board.
 Harold Simandl, Esq., by Sidney Simandl, Esq., Attorney for Respondents Katie and Harry Kurschner.

BY THE DIRECTOR:

This is an appeal from the action of the respondent Municipal Board in granting to respondents Katie and Harry Kurschner a place-to-place transfer of their license from 187 to 189 South Orange Avenue, Newark.

At the time of the hearing the appellant was confined to a hospital and her attorney requested that he be permitted to produce her as a witness at a future date. It was agreed by the attorneys of the parties herein that the case proceed subject to be continued until January 6, 1949, so that the appellant might have an opportunity to testify. The attorney for the appellant advised, however, by letter dated December 31, 1948, that appellant would in all probability be confined to the hospital for an indefinite period of time and he suggested that "the hearing be closed".

It was stipulated and agreed by the attorneys herein that the transcript of the testimony given by two objectors before the respondent issuing authority be used as evidence in the within appeal. One of the objectors, who purchased the building known as 187 South Orange Avenue about ten months before the application for transfer was made, testified that he had no personal knowledge of any improper acts allegedly committed in or about the licensed premises. The other objector, one Octavio Massino, a janitor at 187 South Orange Avenue, testified that, although he never visited respondent licensees' tavern, he did observe on occasion persons playing "dice" games and breaking bottles outside the premises, people congregating on the sidewalk in front of the premises, and failure on the part of respondent licensees to maintain the outside of the premises immediately adjacent thereto in a clean and wholesome manner. He also testified that he saw women taken by men to the cellar which is not part of the licensed premises.

Three witnesses, produced by respondent licensees at the hearing herein, testified that they have lived close to the licensed premises for the past seven or more years and that, in so far as they could observe, the respondent licensees' place of business was operated in a respectable and decent manner.

Harry Kurschner, one of the respondent licensees, and his son Leo Kurschner, who is employed on the licensed premises, testified that they have at all times endeavored to operate the liquor establishment in such a manner as to cause no annoyance to the neighbors. The respondent licensees conducted business at 187 South Orange Avenue for nine years, and no previous complaints were ever made against them.

The testimony of Octavio Massino refers solely to conditions which he observed on the outside of the licensed premises. It would appear that conditions such as those complained of may be effectively dealt with by local police measures. See Salmanowitz v. Hightstown, Bulletin 807, Item 2.

My function in appeals of this type is not to substitute my personal opinion for that of the municipal issuing authority but, rather, to determine whether reasonable cause exists for its opinion and, where reasonable cause exists, to affirm. See Rafalowski v. Trenton, Bulletin 155, Item 8; Curry v. Margate City, Bulletin 460, Item 9; Ashton v. Hopewell et al., Bulletin 782, Item 11.

On the record before me, I cannot find that the action of the respondent Board, in approving the application for transfer to the premises in question, was arbitrary or an unreasonable abuse of discretion warranting a reversal. See Koos v. Ocean Township, Bulletin 810, Item 4.

The action of the respondent Board in transferring the plenary retail consumption license from 187 to 189 South Orange Avenue, Newark, is hereby affirmed.

Accordingly, it is, on this 23rd day of March, 1949,

ORDERED that the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK,
Director.

8. APPELLATE DECISIONS - MILCHMAN v. NEWARK.

Helen Milchman,)	
Appellant,)	
v.)	On Appeal
Municipal Board of Alcoholic)	
Beverage Control of the City)	CONCLUSIONS AND ORDER
of Newark,)	
Respondent.)	

Harold Simandl, Esq., Attorney for Appellant.
Thomas L. Parsonnet, Esq., by George B. Astley, Esq., Attorney
for Respondent.

BY THE DIRECTOR:

On November 23, 1948, respondent transferred a plenary retail consumption license from Christine Conlon to Helen Milchman, the appellant herein. The premises in question are located at 497 Washington Street, Newark. The transfer was granted upon the express condition that Harry Milchman, husband of appellant, and two other named persons "shall at no time be employed in the licensed premises as manager, supervisor, or in any other capacity." Appellant appeals from the imposition of the condition upon her license.

Appellant alleges that the action of respondent was erroneous because she was not given any prior notice of, or granted any hearing upon, the resolution imposing the condition. The condition was imposed pursuant to R.S. 33:1-32, and the resolution was in

fact approved by me prior to its adoption as required by the terms of said section. R.S. 33:1-32 does not require that the issuing authority shall give any prior notice or grant any hearing to the licensee prior to imposing any condition and, hence, I conclude that the action of respondent should not be set aside merely because appellant was not given an opportunity to be heard as to the terms of the condition imposed. VanHorn v. Manalapan, Bulletin 735, Item 9.

My approval of the condition herein was given ex parte and, hence, on appeal I shall consider the evidence to determine whether the appellant has sustained the burden of proof in showing that the condition was unreasonable, in whole or in part. Cf. Bulletin 34, Item 5, and Bulletin 43, Item 12. Appellant has introduced no evidence concerning the character or fitness of the two individuals other than her husband and, hence, as to those individuals, the condition will be affirmed.

As to Harry Milchman, there is affirmative evidence in the case that he is a person of good character. From November 1944 until December 1945 he had been a temporary police officer on the Newark Police force, and was released only because he was disqualified by age from taking a Civil Service examination. Subsequently he became a stockholder in a corporation which formerly held a license in Newark, and later became a stockholder in a corporation which now holds a plenary retail consumption license in Newark. Apparently the record of the first mentioned licensed corporation is clear and, while disciplinary proceedings are pending and undecided in this Division against the corporation which now holds a license, there is nothing to show that Harry Milchman was involved in the alleged violation. Respondent's principal objection as to Harry Milchman appears to be that it believes he may have an undisclosed interest in his wife's business. The evidence indicates that he does not have any such interest. Appellant testified that she inherited a large sum of money; that she has conducted her own real estate business for many years; that she purchased the building and the licensed business at 497 Washington Street with her own money and that her husband has no interest in the licensed business. If, as appears from the evidence herein, the husband, who is qualified to hold a license, has no interest in appellant's business, the condition imposed herein is unreasonable as far as appellant's husband is concerned. If it should hereafter appear that the husband has an interest, the license may be suspended or revoked.

I conclude that the imposition of the special condition, in so far as it prohibits the employment of Harry Milchman by his wife, was unreasonable under the evidence presented in this case. The condition will, therefore, be modified.

Accordingly, it is, on this 28th day of March, 1948,

ORDERED that the special condition imposed on the license issued to Helen Milchman, for premises 497 Washington Street, Newark, be modified by striking therefrom the words "Harry Milchman, husband of the licensee," and that the said condition, as so modified, shall continue in full force and effect.

ERWIN B. HOCK,
Director.

9. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
WACLAW LIPKA,
384 Grove Street,
Jersey City 2, N.J.,
Holder of Plenary Retail Consumption License C-272, issued by the Board of Commissioners of the City of Jersey City.

CONCLUSIONS
AND
ORDER

Waclaw Lipka, Defendant-licensee, Pro Se.
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he possessed illicit alcoholic beverages on his licensed premises, in violation of R.S. 33:1-50.

On February 2, 1949, an inspector of the Federal Alcohol Tax Unit, Internal Revenue Service, seized two bottles of whiskey labeled "Schenley Reserve Blended Whiskey" and "Seagram's Seven Crown Blended Whiskey", respectively, on defendant's licensed premises when preliminary tests thereof indicated that the contents of the two bottles were not genuine as labeled. Subsequent analysis by a Federal chemist confirmed the preliminary tests.

The minimum suspension for an unaggravated violation similar to the instant case is fifteen days. (Re Salco, Bulletin 762, Item 6.) In June 1942, defendant's license was suspended for five days by the local issuing authority for permitting sale of alcoholic beverages during prohibited hours on Sunday. However, because of the length of time which has elapsed since the prior violation, it will not be considered in determining the penalty herein. I shall suspend the license for fifteen days and remit five days thereof because of the plea, leaving a net suspension of ten days.

Accordingly, it is, on this 25th day of March, 1949

ORDERED that Plenary Retail Consumption License C-272, issued by the Board of Commissioners of the City of Jersey City to Waclaw Lipka, for premises 384 Grove Street, Jersey City, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m., April 4, 1949, and terminating at 2:00 a.m., April 14, 1949.

ERWIN B. HOCK,
Director.

10. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE
SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)	
)	
ELIZABETH HOTEL CO.,)	CONCLUSIONS
t/a Elizabeth Carteret Hotel,)	
1155 East Jersey Street,)	
Elizabeth 4, New Jersey.)	AND
Holder of Plenary Retail Consumption License C-11, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth.)	ORDER

Thomas L. Hanson, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that it possessed illicit alcoholic beverages at its licensed premises, in violation of R.S. 33:1-50.

On October 11, 1948, an agent of the State Division of Alcoholic Beverage Control seized one 4/5 quart bottle labeled "Myer's Rum Planter's Punch Brand" and one 4/5 quart bottle labeled "Blended Scots Whisky Haig & Haig", when his field tests indicated that the contents of said bottles were not genuine as labeled. Subsequent analysis by the Division Chemist confirmed this finding. Said alcoholic beverages are, therefore, illicit alcoholic beverages.

Defendant has no prior adjudicated record. I shall suspend its license for the minimum period, namely, fifteen days. Re Nurse, Bulletin 680, Item 7. Remitting five days thereof because of the plea will leave a net suspension of ten days.

Accordingly, it is, on this 25th day of March, 1949,

ORDERED that Plenary Retail Consumption License C-11, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth to Elizabeth Hotel Co., t/a Elizabeth Carteret Hotel, for premises 1155 East Jersey Street, Elizabeth, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m., April 11, 1949, and terminating at 2:00 a.m., April 21, 1949.

ERWIN B. HOCK,
Director.

11. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PRIOR RECORD -
LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ARTHUR CUMMINS,)
424 - 45th Street,)
Union City, New Jersey,)

CONCLUSIONS

AND

Holder of Plenary Retail Consumption License C-137; issued by the Board of Commissioners of the City of Union City.)

ORDER

Arthur Cummins, Defendant-licensee, Pro Se.
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he possessed an illicit alcoholic beverage on his licensed premises, in violation of R.S. 33:1-50.

On February 4, 1949, an agent of the Federal Alcohol Tax Unit, Internal Revenue Service, seized a bottle of whiskey labeled "Canadian Club Blended Canadian Whisky" on defendant's licensed premises when preliminary tests thereof indicated that the contents of the bottle were not genuine as labeled. Subsequent analysis by a Federal chemist confirmed the preliminary tests.

The minimum suspension for an unaggravated violation similar to the instant case is fifteen days (Re Rudolph, Bulletin 680, Item 1). Effective September 9, 1945, defendant's license was suspended for two days by the local issuing authority for permitting women to be served at the bar in violation of a municipal ordinance. Under the circumstances I shall suspend defendant's license for a period of twenty days, less five days' remission for the plea entered herein, or a net suspension of fifteen days.

Accordingly, it is, on this 25th day of March, 1949,

ORDERED, that Plenary Retail Consumption License C-137, issued by the Board of Commissioners of the City of Union City to Arthur Cummins, 424 - 45th Street, Union City, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 3 a.m., April 4, 1949, and terminating at 3 a.m., April 19, 1949.

ERWIN B. HOCK,
Director.

12. DISCIPLINARY PROCEEDINGS - FAILURE OF RETAIL LICENSEE TO HAVE INVOICE OR MANIFEST ON VEHICLE DELIVERING LIQUOR TO CUSTOMERS - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against D. NOTKIN & SON, INC., 51 Arch Street, Paterson, N. J., Holder of Plenary Retail Distribution License D-21, issued by the Board of Alcoholic Beverage Control of the City of Paterson.

CONCLUSIONS AND ORDER

Charles Turndorf, Esq., Attorney for Defendant-licensee. Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to charge alleging that it violated Rule 3 of State Regulations No. 17.

Defendant, on February 9, 1949, through its agents and servants, transported and delivered to customers, quantities of alcoholic beverages in its licensed vehicle bearing transportation insignia. However, the driver of said vehicle did not have in his possession any invoice or manifest covering said shipment, as required by the provisions of Rule 3 of State Regulations No. 17.

Jacob Notkin, president of defendant-corporation, contends that the orders of alcoholic beverages delivered and to be delivered were obtained by telephone, but he admits that no invoice or manifest was prepared for these deliveries.

Defendant has no previous adjudicated record. Under the circumstances, I shall suspend its license for a period of ten days, less five days' remission for the plea entered herein, or a net suspension of five days.

Accordingly, it is, on this 24th day of March, 1949,

ORDERED that Plenary Retail Distribution License D-21, issued by the Board of Alcoholic Beverage Control of the City of Paterson, to D. Notkin & Son, Inc., for premises 51 Arch Street, Paterson, be and the same is hereby suspended for a period of five (5) days, commencing at 9 a.m., April 4, 1949, and terminating at 9 a.m., April 9, 1949.

ERWIN B. HOCK, Director.

13. STATE LICENSES - NEW APPLICATIONS FILED.

Clifton L. Willis, t/a Cliff's Beverage Co. 3707 Sunset Avenue Atlantic City, New Jersey.

Application filed March 28, 1949 for transfer of limited Wholesale License WL-45 from Gerald F. O'Mara, Receiver for Heirloom, Inc.

John Cattani, (Wine Wholesale License WW-26) t/a John Cattani & Sons

603-607 Central Avenue, Union City, N. J. Application for additional warehouse at 606-608 Central Avenue, Union City, New Jersey, filed April 4, 1949.