

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

BULLETIN 406

MAY 29, 1940.

1. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES -  
30 DAY SUSPENSION - HOSTESS CHARGE DISMISSED BECAUSE NEWARK  
HOSTESS RESOLUTION REPEALED.

In the Matter of Disciplinary )  
Proceedings against )

HENRY MORCHOWER, )  
47-49 Pennington Street, )  
Newark, New Jersey, )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License No. C-217, issued by )  
the Municipal Board of Alcoholic )  
Beverage Control of the City of )  
Newark. )  
- - - - - )

Nathaniel J. Klein, Esq., Attorney for Defendant-Licensee.  
Samuel B. Helfand, Esq., Attorney for Department of Alcoholic  
Beverage Control.

The defendant is charged with (1) permitting lewdness and immoral activities at his tavern, contrary to Rule 5 of State Regulations No. 20, and (2) having a "hostess" there, contrary to Section (c) of Resolution of August 29, 1934 of the Newark Board of Alcoholic Beverage Control.

As to (1): It would be distasteful, and serve little purpose, here to repeat in all its detail the lewdness which occurred at the defendant's tavern.

Suffice it to say that, in view of the evidence, I find as fact that agents of this Department visited the tavern on July 19 and August 2 and 10, 1939; that on the first such visit they observed "Dotty", a female entertainer at the tavern, embrace a departing male patron in the barroom, and permit him, in such embrace, to rub his hands freely over her buttocks and thighs; that on the second visit of the agents "Dotty", uninvited, joined them at the bar, solicited drinks from them, told them filthy stories, and by word and gesture beckoned them, after a remark about her form-fitting sweater, to feel her breasts through it; that on their third visit "Dotty" again solicited drinks from the agents, tried to excite them sexually by use of her hands and by jumping onto the lap of one of the agents and wiggling, discussed possibility of illicit intercourse with them, and later lifted her skirt and adjusted her undergarments in indecent exposure of herself for them; that the defendant's bartender (despite his denial) witnessed this exposure and joined in the ribaldry.

The defendant testified that he hired "Dotty" as a singer; was unaware of her doing anything wrong; and let her go as soon as he learned that she was the cause for the present charges against him. He also produced various patrons and employees at the tavern who testified that it has been operated in a respectable manner.

A licensee is strictly accountable for any lewdness or immoral activity performed or permitted by his employees upon the licensed premises. Re Mazziotti, Bulletin 301, Item 9; Re Kurtz, Bulletin 403, Item 7.

I find the defendant guilty on charge (1).

As to the penalty: Vice must be driven relentlessly from the tavern. Hence, for the lewdness which occurred at the defendant's place his license will be suspended for thirty days. A sterner penalty would be imposed were it not for the fact that there is nothing to show that the defendant actually knew of the lewdness and the further fact that the agents, although not initiating the immoral activity, nevertheless, in following "Dotty's" lead, at times seemed to have led her on.

As to charge (2): The defendant moves for dismissal of such charge on the ground that the hostess regulation - viz., Section (c) of the Resolution of August 29, 1934 - which he is alleged to have violated because of "Dotty's" soliciting drinks from the agents on August 2 and 10, 1939, was no longer in effect on those dates.

Such Resolution of August 29, 1934 was adopted by the Newark Board of Alcoholic Beverage Control during the time when it had the power to adopt local liquor regulations. (See P.L.1933, c. 436, Sec. 37, p. 1204, as am. by L. 1934, c. 85, Sec. 30, p.248). The resolution reads:

"BE IT RESOLVED, By the Municipal Board of Alcoholic Beverage Control of The City of Newark, that the following regulations be adopted:

"(a) It shall be unlawful for the holder of a Plenary Retail Consumption License to employ any female to tend bar, sell, or serve alcoholic beverages to patrons, where the principal business is the sale of alcoholic beverages.

"(b) It shall be unlawful for the holder of a Plenary Retail Consumption License to employ any female to tend bar, sell, or serve alcoholic beverages to patrons directly over such bar, where the principal business is other than the sale of alcoholic beverages.

"(c) It shall be unlawful for the holder of a Plenary Retail Consumption License to employ any female as a hostess, or to permit any female to act as hostess or in any similar capacity, where the principal business is the sale of alcoholic beverages."

On June 8, 1935 the power to adopt local liquor regulations was (by L. 1935, c. 257, Sec. 14, p. 812) transferred to the Newark Board of Commissioners. (Also see R. S. 33:1-40). However, the above quoted resolution, since in no way abrogated by the Board of Commissioners, continued in effect (Re Beisch, Bulletin 231, Item 2) until May 24, 1939, when that Board adopted the following resolution:

"BE IT RESOLVED, by the Board of Commissioners of the City of Newark, that under and by virtue of the authority of the provisions of the Alcoholic Beverage Law of the State of New Jersey, (Title 33, Intoxicating Liquors, Revised Statutes of New Jersey, 1937) the following regulations be and the same are hereby adopted:

"(a) It shall not be permissible for the holder of a plenary Retail Consumption License to allow or employ any female, except the wife of any such license holder, to tend bar, sell or serve alcoholic beverages to patrons, where the principal business is the sale of alcoholic beverages, provided, however, that the wife of such license holder shall be permitted to tend bar, sell or serve alcoholic beverages only during the hours from seven o'clock A.M. to six o'clock P.M. on week days, and from twelve o'clock noon to six o'clock P.M. on Sundays.

"(b) It shall not be permissible for the holder of a Plenary Retail Consumption License to allow or employ any female, except the wife of the holder of such license to tend bar, sell or serve alcoholic beverages to patrons directly over such bar, where the principal business is other than the sale of alcoholic beverages, provided, however, that the wife of such license holder shall be permitted to tend bar, sell or serve alcoholic beverages to patrons, directly over such bar, only during the hours from seven o'clock A.M. to six o'clock P.M. on week days, and from twelve o'clock noon to six o'clock P.M. on Sundays.

"Any resolution inconsistent with the provisions of this resolution, be and the same is hereby repealed."

It is evident that the above 1934 resolution was intended to regulate the question of female employees at retail consumption liquor places in Newark. The quoted 1939 resolution, dealing with that same general question, does not purport to be an amendment of the earlier resolution but stands as an independent enactment and expressly repeals "any resolution" inconsistent with it.

Apart from the question whether the presence of a "hostess" provision - Section (c) - in the 1934 resolution and the absence of such a provision in the 1939 resolution constitutes an inconsistency between them, clearly Sections (a) and (b) of the earlier resolution are inconsistent with the terms of the later one. Hence, under the broad repealer of such later resolution, the 1934 resolution stands repealed in whole, including the "hostess" provision.

On June 2, 1939 this Department, realizing the desirability of continuing the "hostess" regulation in Newark and believing that the Board of Commissioners had perhaps not intended to do away with such regulation, informed that Board, by letter to the City Clerk, of the probable effect of its broad repealer and strongly recommended that, if the Board wishes to retain a "hostess" regulation it should act accordingly. See Re Reichenstein, Bulletin 319, Item 10. No such action was taken.

In view that the "hostess" regulation was no longer in effect on the dates when the defendant is alleged to have violated it, charge (2) against him herein must be dismissed.

Accordingly, it is, on this 22nd day of May, 1940,

ORDERED, that Plenary Retail Consumption License No. C-217, heretofore issued to Henry Morchower by the Municipal Board of Alcoholic Beverage Control of the City of Newark for premises at 47-49 Pennington Street, Newark, be and the same is hereby suspended for a period of thirty (30) days, commencing at 3:00 A.M. (Daylight Saving Time) on Monday, May 27, 1940.

E. W. GARRETT,  
Acting Commissioner.

2. DISCIPLINARY PROCEEDINGS - MISREPRESENTATION AS TO FIVE YEARS' RESIDENCE - NO DELIBERATE FRAUD - LICENSE SURRENDERED - CHARGE DISMISSED.

In the Matter of Disciplinary Proceedings against  
RUDOLF HUTTICH,  
Oak Ridge Lake Park,  
Longwood Valley,  
Jefferson Township,  
P.O. Oak Ridge, N. J.,  
Holder of Plenary Retail Consumption License C-22, issued by the Township Committee of Jefferson Township.  
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CONCLUSIONS  
AND ORDER

Richard E. Silberman, Esq., Attorney for the State Department of Alcoholic Beverage Control.  
John J. Meehan, Esq., Attorney for Defendant-Licensee.

Licensee was charged with misrepresenting in his application for license that he had resided in this State continuously during the five years immediately preceding the filing of the application.

From the evidence it appears that the licensee maintained two homes, one in the State of New York and the other in this State. In a written statement given to investigators of this Department, he admitted having voted in New York in November 1938, and also stated that he considered New Jersey his "second home".

The word "residence" as used in the Alcoholic Beverage Law (R. S. 33:1-25) means "domicile", or the place where a person maintains his permanent home to which, when he is absent, he has the intention of returning. Lilly v. Way, Bulletin 220, Item 1; Breslow v. Way, Bulletin 345, Item 6. Since, by his own admission, licensee's primary, or permanent, home was in the State of New York, he did not have the requisite "residence" qualification for a liquor license in New Jersey.

There is nothing to show, however, that the licensee perpetrated a deliberate fraud on the issuing authority. To the contrary, the testimony discloses some basis for his belief that he was properly qualified to hold a liquor license in this State.

Under the circumstances, the license would ordinarily be cancelled and not revoked. However, he has, since the hearing, deposited his license with this Department and offered to surrender it. In view that a cancellation of license does not carry with it as does a revocation (see R. S. 33:1-31) any mandatory statutory disqualification, no reason appears why the surrender of the license should not be permitted. The issuing authority has advised that it has no objection to such surrender. Hence, the license will be deemed surrendered. In view thereof, there is no necessity for directing a cancellation of the license.

The proceedings are, therefore, dismissed.

E. W. GARRETT,  
Acting Commissioner.

Dated: May 23, 1940.

3. APPELLATE DECISIONS - NEW JERSEY LICENSED BEVERAGE ASSOCIATION v. WOODBRIDGE.

NEW JERSEY LICENSED BEVERAGE )  
ASSOCIATION, a corporation, )  
 )  
Appellant, )  
 )  
-vs- )  
 )  
TOWNSHIP COMMITTEE OF THE )  
TOWNSHIP OF WOODBRIDGE, and )  
SILVER PALMS OF WOODBRIDGE, )  
a corporation, )  
 )  
Respondents )  
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ON APPEAL  
CONCLUSIONS

William C. Egan, Esq., Attorney for the Appellant.  
Leon E. McElroy, Esq., Attorney for the Respondent, Township  
Committee of the Township of Woodbridge.  
Christian J. Jorgensen, Esq., Attorney for the Respondent,  
Silver Palms of Woodbridge.

Appellant appeals from the action of the Township Committee of the Township of Woodbridge in granting a transfer of a plenary retail consumption license held by Mary Hajcki to Silver Palms of Woodbridge, a corporation, for premises 824 St. George Avenue, Woodbridge.

Appellant contends that said transfer was (1) granted in violation of municipal ordinance, and (2) obtained by subterfuge.

As to (1): Section 16 of an ordinance adopted by the Township Committee on June 18, 1934 provides:

"No license shall be granted unless and until the applicant has resided in the Township of Woodbridge continuously for a period of two years next preceding the date of making the application for a license, nor shall a license (other than a club license) be issued to any corporation that has not been in existence for at least two years prior to the date of its application."

Appellant argues that the ordinance requires that the stockholders of a corporate licensee must have lived in the municipality for two years preceding the application for license. However, it is obvious that this is not so. A mere reading of the section is sufficient to substantiate the interpretation by the issuing authority of its own ordinance that the word "applicant" refers only to individuals and not to corporations. It is clear that, by its very terms, the only requirement affecting a corporation is that it shall have been in existence for two years. Cf. South Plainfield Liquor and Beverage Stores, Inc. v. South Plainfield, Bulletin 216, Item 7, where a practically identical ordinance was construed.

Although the appellant did not raise the issue that the corporate licensee had not been in existence for two years prior to making application for license, it should be pointed out that the provision in the ordinance to that effect is unreasonable and, therefore, invalid. South Plainfield Liquor and Beverage Stores, Inc. v. South Plainfield, supra.

As to (2): On December 14, 1939, Mrs. Julia Hahn applied to the Township Committee for a transfer of Mary Hajcki's plenary retail consumption license to herself for premises 824 St. George Avenue, Woodbridge. In her application she gave her address as Woodbridge, N. J. On January 15, 1940 the application for transfer was denied, without hearing, because the local Chief of Police reported that she resided in Perth Amboy, N. J. and not in Woodbridge.

Mrs. Hahn testified that she was born in Woodbridge and had lived there all of her life until January 1939, when she and her husband moved to Perth Amboy, where they occupied a vacant apartment in a house owned by her mother-in-law, Mrs. Emma Meszaros. She explained that they moved to Perth Amboy only as a temporary expedient to help Mrs. Meszaros to obtain some revenue from her property, and that they intended to return to Woodbridge as soon as Mrs. Meszaros could find another tenant. After living there several months, Mrs. Hahn became pregnant and decided to remain there to receive the aid of Mrs. Meszaros, who is a professional midwife, until she gave birth, after which, she testified, she and her husband intended to return to Woodbridge. She further stated that the reason for giving her address as Woodbridge in her application was that she had always considered that address as being her permanent home, even while she was temporarily residing at Perth Amboy.

These facts would seem to indicate that Mrs. Hahn's legal domicile, at the time of filing her application for license, was in Woodbridge. In such situation, it is open to question whether the issuing authority was correct in denying her application because of her alleged non-residence in the municipality. "Residence" is ordinarily synonymous with "domicile", which means a place where a person maintains his permanent home to which, when away, he intends to return. Cf. Breslow v. Way, Bulletin 345, Item 6.

On January 25, 1940 the respondent corporation was formed, the principal stockholders of which are Mrs. Hahn, her husband and her mother-in-law, Mrs. Meszaros, each of whom owns thirty per cent of the stock. The remaining ten per cent of the corporate stock is divided between Mrs. Meszaros' nephew and his wife.

It was urged by appellant that the only reason for organizing the corporation was to permit Mrs. Hahn to hold a license which had been previously denied to her as an individual. There is nothing in the facts produced at the hearing to support this argument. So far as appears, the corporation was duly organized. Mrs. Meszaros provided the money for the purchase of the license and business and made gifts of the stock to the members of her family in the manner above outlined. Independent investigation by this Department corroborates this uncontradicted evidence and fails to disclose that the corporation is being used as a "front" for any person or persons.

Furthermore, where, as here, a corporate applicant is not barred from holding a liquor license even though its stockholders may not be residents in the municipality, the use of the corporate device by such stockholders as a means of obtaining a license is not intrinsically unlawful. The statute (R.S.33:1-12.1) prohibiting the issuance of retail licenses to corporations unless each owner of more than ten per cent of the stock could qualify as an individual applicant, relates only to the statutory qualifications set forth in the Alcoholic Beverage Law, and not to any added municipal qualifications. See Sachs v. Trenton, Bulletin 321, Item 12, where in holding that a transfer of license would be set aside if it appeared that a corporation was merely a cloak for a stockholder disqualified by statute from personally holding a license, it was said:

"The same strict rules need not be applied, however, where the issue concerns local residential requirements. Such requirements are not specifically set forth in the Statute. They may be superimposed, if reasonable in the period of residence required, to permit the issuing authority to judge the applicant's character. Iamello v. Rumson, Bulletin 77, Item 9; McHugh v. West Deptford, Bulletin 106, Item 1. Aside from affording an opportunity to judge an applicant's character, no reason exists for such additional requirements."

Under all the circumstances, it is concluded that the transfer of license to the corporation was not obtained by subterfuge and that the Township Committee did not abuse its discretion in granting the transfer to it.

The action of the respondent Township Committee is, therefore, affirmed.

E. W. GARRETT,  
Acting Commissioner.

Dated: May 23, 1940.

4. DISCIPLINARY PROCEEDINGS - FRONT - DAUGHTER AND FATHER - EVIDENCE INSUFFICIENT - CHARGES DISMISSED.

In the Matter of Disciplinary Proceedings against )

CONNIE DI BIASE, State Highway 35, Morgan, Sayreville, P.O. R.F.D. 1, South Amboy, New Jersey, )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License No. C-23 issued by Borough Council of the Borough of Sayreville. )

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Connie DiBiase, Pro Se. Charles Basile, Esq., Attorney for Department of Alcoholic Beverage Control.

Licensee pleaded not guilty to charges alleging, in substance, that (1) in her application for license she falsely stated that no other individual had any interest directly or indirectly in the license or business, whereas in fact Frank DiBiase had such an interest, and (2) that, since July 1, 1939, she knowingly aided and abetted Frank DiBiase, a non-licensee, to exercise the rights and privileges of her license.

Frank DiBiase is the licensee's father. He owns the building wherein the licensed premises are located and owns the equipment used in conducting an Italian-American restaurant and tavern. Apparently he is qualified to hold a license and, in fact, held the license covering said premises for a few years following Repeal. About three years ago the license was obtained by Nellie DiBiase, another daughter, and she held successive licenses until June 30, 1939. Connie DiBiase applied for and obtained the license for the present fiscal year.

Both licensee and her father made admissions to Investigators from which it might be concluded that the real licensee is the father. The admissions made by father and daughter must be viewed in the light that, without question, he owns the building and equipment. Thus, admissions that he owns the "place" do not necessarily lead to the conclusion that he is conducting the licensed business.

The investigators testified that all bills for the licensed premises are in the name of Connie DiBiase. She is fully qualified. She testified that she runs the business herself and that her father "doesn't have anything to do with the business." She conducts the place. Her father works in a brickyard. I am satisfied from the evidence that the licensed business belongs to Connie DiBiase.

The charges are, therefore, dismissed.

E. W. GARRETT, Acting Commissioner.

Dated: May 24, 1940.

5. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against )

JACOB ZIMMER, T/a Zimmer's, 733 Mattison Avenue, Asbury Park, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-10, issued by the City Council of the City of Asbury Park. )

Frankel & Frankel, Esqs., by Charles Frankel, Esq., Attorneys for Licensee. Charles Basile, Esq., Attorney for Department of Alcoholic Beverage Control.

Charges served upon licensee allege that (1) on January 22, 1940 he sold thirteen fifth bottles of Signet Whiskey at less than the Fair Trade price, in violation of Rule 6 of State Regulations No. 30, and (2) on said date he offered and furnished a gift, rebate and discount with the sale of alcoholic beverages for consumption off the licensed premises in violation of Rule 20 of State Regulations No. 20.

Both charges relate to the one transaction.

It is admitted that, on the day in question, \$25.92 was the Fair Trade price of a case containing twelve fifth bottles of Signet Whiskey.

Gerald Hayes testified that, on January 22, 1940, he and Jacob Zimmer discussed various whiskeys at the liquor counter of the licensed premises. He says that Zimmer showed him the Fair Trade price and offered the case of Signet for \$25.92; that Zimmer refused to sell the case for less; that Zimmer finally agreed to give him a free bottle if he bought the case. Hayes further testified that licensee then placed a single bottle on the counter, took a case from the shelf and put it on the counter, accepted \$25.92 in payment, and made out a bill for one case at that price.

Investigators Anderson and Williams of this Department were in the licensed premises by prearrangement. Neither heard the conversation between Hayes and Zimmer. Anderson testified that he saw Zimmer first place the single bottle on the counter and later the case; that after the transaction was completed he spoke to Zimmer, who told him, "Well, I made a mistake that time." Williams corroborated Anderson's testimony.

Licensee testified that, during the summer of 1939, on two occasions, Hayes had purchased from him cases of whiskey. It is not denied that on both occasions Hayes used a fictitious name and stated that he was employed by a wealthy man in Elberon, whereas in fact he was and is employed by a competitor. As to the transaction on January 22, 1940, licensee testified that after the case had been sold Hayes asked for a bottle for himself and agreed to pay for it the next time he came in; that the single bottle was placed on the counter after the case had been so placed. Licensee denied the testimony given by the investigators.

Two witnesses who said they were in the store corroborated Zimmer.

The fact that Hayes was employed by a competitor is immaterial except so far as it affects his credibility. I believe the story told by Hayes because it is corroborated by the investigators to the extent that they saw the licensee place the single bottle on the counter before getting the case and to the extent that licensee admitted to them that he had made a mistake. I do not believe Zimmer's story because, although he made out a bill for the case, he made no written record of the sale of the single bottle and took no written evidence from Hayes as to the amount due on the alleged sale of the single bottle. The transaction has all the earmarks of a gift of the bottle.

The first charge is dismissed because the evidence shows that the case was sold at the Fair Trade price.

I find the licensee guilty as to the second charge. The license will be suspended for five (5) days because of the violation of Rule 20 of State Regulations No. 20.

Accordingly, it is, on this 8th day of May, 1940,

ORDERED, that License No. D-10, heretofore issued to Jacob Zimmer, T/a Zimmer's, by the City Council of the City of Asbury Park, be and same is hereby suspended for a period of five (5) days, effective May 13, 1940, at 3:00 A.M. (D.S.T.).

E. W. GARRETT,  
Acting Commissioner.

6. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEE - SALES DURING PROHIBITED HOURS - 4 DAYS' SUSPENSION ON CONFESSION OF GUILT.

In the Matter of Disciplinary Proceedings against  
JOSEPH EHRLICH & PHILIP DESHOWITZ,  
T/a Town Talk Tavern,  
603 Central Ave.,  
Newark, N. J.,  
Holders of Plenary Retail Consumption License C-342, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS  
AND ORDER

Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.  
Sidney Simandl, Esq., Attorney for Defendant-Licensees.

The licensees have pleaded guilty to an allegation that on May 11, 1940 they sold alcoholic beverages after 3:00 A.M., in violation of Section 1 of Ordinance 3930 adopted by the Board of Commissioners of the City of Newark on December 21, 1938.

This is the licensees' first offense of this nature. The Department records disclose that this license was suspended

for three days, effective October 3, 1938, because of mislabeled beer taps in violation of Rule 1 of State Regulations 22. The usual penalty of five days will, therefore, be increased to seven days, less three days for the guilty plea.

Accordingly, it is, on this 23rd day of May, 1940,

ORDERED, that Plenary Retail Consumption License C-342, heretofore issued to Joseph Ehrich & Philip Deshowitz by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of four (4) days, effective June 3, 1940, at 3:00 A.M. (Daylight Saving Time).

E. W. GARRETT,  
Acting Commissioner.

7. DISCIPLINARY PROCEEDINGS - NEWARK HOSTESS RESOLUTION HAVING BEEN REPEALED, CHARGES ARE DISMISSED.

In the Matter of Disciplinary Proceedings against  
WALTER HEURING,  
291 Plane Street,  
Newark, N. J.,  
Holder of Plenary Retail Consumption License C-868 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.  
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CONCLUSIONS

Richard E. Silberman, Esq., Attorney for the State Department of Alcoholic Beverage Control.  
Nicholas Albano, Esq., Attorney for the Licensee.

The licensee was charged with employing hostesses on November 16, 1939, in violation of Section (c) of resolution adopted by the Newark Municipal Board of Alcoholic Beverage Control on August 29, 1934.

Subsequent to the institution of these proceedings the regulation alleged to have been violated was declared to have been repealed on May 24, 1939, in Re Morchower, Bulletin 406, Item 1.

The regulation alleged to have been violated not having been in effect at the time the violation was alleged to have occurred, the charge must be dismissed.

E. W. GARRETT,  
Acting Commissioner.

Dated: May 24, 1940.

8. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application )  
to Remove Disqualification be- )  
cause of a Conviction, pursuant )  
to R. S. 33:1-31.2 (as amended )  
by Chapter 350, P.L. 1938) )

CONCLUSIONS  
AND ORDER

Case No. 84 )  
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In June 1932 petitioner was arrested in a New Jersey municipality on charges of carrying concealed weapons and assault with intent to kill. In October 1933 he was arrested, in New York City, on a charge of unlawfully possessing a firearm. To the latter charge he pleaded guilty and was sentenced to and served six months in a workhouse. Trial upon the former charges did not take place until November 1934, at which time petitioner was found guilty and sentenced to serve six months in a county jail. He was released from the county jail on April 18, 1935 and has not been arrested or convicted of any crime since that time.

At the hearing a dentist, a druggist, a retired police officer and a business man, all of whom have known petitioner for more than twenty-four years, testified that, aside from the convictions referred to herein, he has always been law-abiding. The Chief of Police of the municipality where he resides has certified that appellant has conducted himself in a proper manner since his previous arrests.

From the evidence I am satisfied that petitioner has conducted himself in a law-abiding manner for at least five years last past and that his association with the alcoholic beverage industry will not be contrary to the public interest.

It is, therefore, on this 25th day of May, 1940,

ORDERED, that petitioner's statutory disqualification because of the convictions described herein be and the same is hereby lifted in accordance with the provisions of R.S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938).

E. W. GARRETT,  
Acting Commissioner.

9. DISCIPLINARY PROCEEDINGS - SERVICE AND DELIVERY TO PERSONS ACTUALLY OR APPARENTLY INTOXICATED - IMMORAL ACTIVITIES - CHARGES DISMISSED.

In the Matter of Disciplinary Proceedings against

MULBERRY TAVERN, INC., 153 Mulberry St., Newark, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License No. C-179 for fiscal year 1938-1939, issued by Municipal Board of Alcoholic Beverage Control of the City of Newark.

Sidney Simandl, Esq., Attorney for Licensee. Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

Charges served upon the licensee allege that:

"1. On or about March 31, 1939, you sold, served and delivered, and allowed, permitted and suffered the service and delivery of alcoholic beverages to persons actually or apparently intoxicated, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon the licensed premises, contrary to Rule 1 of State Regulations No.20.

"2. On or about March 24, 1939, March 31, 1939, and April 10, 1939, you allowed, permitted and suffered in or upon your licensed premises lewdness and immoral activities in that you permitted the use of vile and indecent language by your patrons, contrary to Rule 5 of State Regulations No. 20."

As to Charge (1): On March 31, 1939, at 8:30 P.M., investigators of this Department entered the licensed premises. They testified that, while they were present, two men staggered from a bench to the bar and were served a glass of beer by the bartender; that the same bartender served a glass of beer to another young man who staggered to the bar and to an older man who "seemed to be under the weather, slightly staggering, thick tongue".

On behalf of the licensee, Samuel Weinberg, the manager, testified that no drinks were served to intoxicated persons on March 31, 1939; that intoxicated people are not permitted to enter. The bartender, Julius Briefel, testified that he did not serve drinks on March 31, 1939 to people who were staggering. Two police officers testified that the place is orderly.

The evidence leaves a doubt in my mind as to whether these patrons were actually or apparently intoxicated and I shall give the licensee the benefit of the doubt. The first charge is dismissed.

As to Charge (2): The evidence shows that on March 24, 1939, an unnamed woman used foul and indecent language on the licensed premises, and that on March 31, 1939 and April 10, 1939 a woman named "Marie" used filthy language. None of the licensee's employees or other patrons participated in filthy conversation with either woman. The evidence is insufficient to show a violation of Rule 5 of State Regulations No. 20. Hence the second charge is also dismissed.

E. W. GARRETT,  
Acting Commissioner.

Dated: May 25, 1940.

10. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - FURTHER DISCUSSION OF REFILL PROBLEM - FORMER BARTENDER GUILTY OF REFILLING - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against  
  
ALBERT ORBACH (or ORBACK),  
147 Broadway,  
Paterson, N. J.,  
  
Holder of Plenary Retail Consumption License No. C-106, issued by the Board of Aldermen of the City of Paterson.  
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CONCLUSIONS  
AND ORDER

Maurice D. Emont, Esq., Attorney for Defendant-Licensee.  
Richard E. Silberman, Esq., Attorney for State Department of Alcoholic Beverage Control.

The defendant is charged with possessing illicit liquor contrary to R. S. 33:1-50.

Federal agents took four partly filled bottles of whiskey from the back bar of the defendant's tavern. The Federal chemist, from his analysis of the contents of those bottles, concluded that the liquor was not genuine as labeled.

The defendant virtually admits this conclusion to be true but claims, in defense, that a man whom he had hired to clean up the tavern and to occasionally tend bar "stole" drinks from these bottles and replaced what he took with wine or water; that he (the defendant), upon learning of such fact, discharged the man. This man appeared and testified in corroboration.

The "refilled" liquor constituted illicit beverage. Re Haney, Bulletin 304, Item 13. Hence the defendant's mere possession of such at his tavern was a violation of the Alcoholic Beverage Law (R. S. 33:1-50) for which he is strictly accountable, even though he be personally innocent of the refilling. See Re Jacobs, Bulletin 315, Item 8; Re Tumen, Bulletin 316, Item 8; Re Clover Inn, Bulletin 327, Item 2.

I thus find the defendant guilty as charged.

As to the penalty: The problem of "refills" was considered at length in the above cited Re Jacobs and Re Tumen. It was there determined that, even where the licensee is personally innocent of the "refill", nevertheless the minimum penalty, as a matter of policy, should be a thirty-day suspension of license. However, on reconsidering the problem and on the basis of Departmental experience with it, I believe that this penalty is overdrastic for such a case. Where the licensee performs or authorizes or acquiesces in the "refill", or where there is a practice of "refill" at the tavern (whether or not the licensee disclaims knowledge of such), or where the evidence shows that the "refilled" liquor is bootleg, the penalty must and will be heavyfisted. But where, as here, none of these or other aggravating elements is present, a ten-day suspension of license is adequate penalty.

Accordingly, it is, on this 28th day of May, 1940,

ORDERED, that Plenary Retail Consumption License No.C-106, heretofore issued to Albert Orbach (or Orback) by the Board of Aldermen of the City of Paterson, be and the same is hereby suspended for a period of ten (10) days, commencing June 3, 1940, at 3:00 A.M. (Daylight Saving Time).

E. W. GARRETT,  
Acting Commissioner.

11. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - REFILL - PLEA OF GUILT - 15 DAYS' SUSPENSION WHERE LICENSEE PREVIOUSLY WARNED RE ALLEGED REFILL.

In the Matter of Disciplinary Proceedings against )

ANDREW NOVACK, )  
228 Palisade Avenue, )  
Garfield, New Jersey, )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License No. C-24, issued by the City Council of the City of Garfield. )  
----- )

Andrew Novack, Pro Se.  
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

The defendant pleaded guilty to the charge of violating the Alcoholic Beverage Law (R. S. 33:1-50) by possessing an illicit beverage at his tavern, viz., a refilled bottle labeled "Calvert's 'Special' Blended Whiskey".

The defendant's daughter who works in the tavern claims that she is guilty of the refilling; that one day, when opening a bottle of "Silver Dollar" whiskey, she chipped the neck and, being afraid glass had fallen into the bottle and wishing to save its contents, she sieved the "Silver Dollar" whiskey through a cloth into an almost empty "Calvert's" bottle and placed the latter bottle, thus refilled, on the back bar for her own use; that, "without thinking", she allowed the bottle to remain there.

The defendant testified that he knew nothing about the refill. Both he and his daughter state that the "Silver Dollar" Whiskey is sold at the tavern at the same price per drink as the "Calvert's."

The "refilled" liquor constituted illicit beverage. Re Haney, Bulletin 304, Item 13. Hence the defendant's mere possession of such at his tavern was a violation of the Alcoholic Beverage Law (R. S. 33:1-50) for which he is strictly accountable, even though he be personally innocent of the refilling. See Re Jacobs, Bulletin 315, Item 8; Re Tumen, Bulletin 316, Item 8; Re Clover Inn, Bulletin 327, Item 2; Re Orbach, Bulletin 406, Item 10.

As to penalty: Ordinarily the defendant's license would, in view of the principles set forth in Re Orbach, supra, be suspended for ten days. However, since the defendant was warned by this Department in 1937 about a bottle of allegedly refilled liquor then found at his tavern, his license will be suspended for fifteen days.

Accordingly, it is, on this 28th day of May, 1940,

ORDERED, that Plenary Retail Consumption License No. C-24, heretofore issued to Andrew Novack by the City Council of the City of Garfield, be and the same is hereby suspended for a period of fifteen (15) days, commencing June 3, 1940, at 2:00 A.M. (Daylight Saving Time).

*E. W. Barrett*

Acting Commissioner.