

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

BULLETIN 607

FEBRUARY 29, 1944

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REPORT WHEN TO BE MADE  
BY THE OFFICER IN CHARGE  
OF THE VESSEL

DATE OF REPORT

NAME OF VESSEL  
NO. OF PASSENGERS  
NO. OF CREW  
NO. OF TONS  
NO. OF GUNS

1

2

3

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

BULLETIN 607

FEBRUARY 29, 1944

1. DISCIPLINARY PROCEEDINGS - CHARGES OF FALSE ANSWERS IN LICENSE APPLICATION, LICENSEE AIDED AND ABETTED NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE, AND NON-LICENSEE EXERCISED THE RIGHTS AND PRIVILEGES OF THE LICENSE DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against )

MOHAWK GRILL, INC. )  
North Side Route 31 )  
Byram Township )  
P.O. Stanhope, N. J., )

Holder of Plenary Retail Consumption License C-4 for fiscal year 1941-42, issued by the Township Committee of Byram Township. )  
----- )

In the Matter of Disciplinary Proceedings against )

JAMES J. RODDY )  
T/a HOFBRAU )  
Plaza, Lake Mohawk )  
Sparta, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-4 for fiscal year 1941-42, issued by the Township Committee of the Township of Sparta. )  
----- )

In the Matter of Disciplinary Proceedings against )

JOHN DAVID GANNON )  
Route 31 )  
Stanhope, N. J., )

Holder of Employment Permit 2848 for fiscal year 1941-42, issued by the State Commissioner of Alcoholic Beverage Control. )  
----- )

Edward A. Haffer, Esq., Attorney for Mohawk Grill, Inc. and John David Gannon.

John F. Evans, Esq., Attorney for James J. Roddy.  
Philip Klein, Esq., by Laurence N. Rosenbaum, Esq., Attorney for Mohawk Savings & Loan Association.

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

BY THE COMMISSIONER:

The above cases, being closely related, were heard together and, since all may be disposed of herein, they will be decided together.

The charges preferred herein were based upon the allegation that, prior to June 30, 1939, James J. Roddy had resided in New Jersey for less than five years and that, despite his inability at that time to qualify as an individual licensee, he had been the beneficial owner of more than 10% of the stock of Mohawk Grill, Inc. from October 1, 1935 until June 1939, and upon the further allegation that, in December 1939, John David Gannon had resided in New Jersey for less than five years and that, despite his inability at that time to qualify as an individual licensee, he was the beneficial owner of more than 10% of the stock of Mohawk Grill, Inc.

The evidence shows that Mohawk Grill, Inc. was incorporated on September 18, 1935. Eight of its ten shares of stock were issued to Charles Roser, who contributed the sum of \$500.00 when the corporation was organized. One share of stock was issued to James J. Roddy, who contributed little, if any, money, and one share of stock to William Kopp, Jr., who contributed some equipment but no money. From October 1, 1935 until the early part of 1939, the corporation operated the licensed business under successive licenses and employed Roddy as manager. In the early part of 1939 the licensed business was discontinued. Roddy obtained a liquor license in his own name for other premises in Sparta, New Jersey, which license he holds at the present time. Roddy, however, was still the owner of ten shares of stock of Mohawk Grill, Inc. at the time of the hearing held herein.

In December 1939 John David Gannon purchased the one share of stock originally issued to William Kopp, Jr. Thereafter the licensed business reopened and has continued in operation since that time under successive licenses issued to Mohawk Grill, Inc.

It appears from the evidence given at the hearing that defendant, Mohawk Grill, Inc., has its own bank account; has purchased liquor and equipment in its own name; has a telephone listed in its name; and has filed the required social security forms showing Gannon as its employee. Gannon testified that his only interest in the business is his weekly salary of \$40.00 as manager and his interest in the one share of corporate stock. It seems apparent that neither Roddy nor Gannon had any interest in the eight shares of stock originally issued to Charles Roser (since deceased).

On the evidence presented I find that the Department has not sustained the burden of proof in showing that either Roddy or Gannon was beneficially interested in more than 10% of the stock of Mohawk Grill, Inc. Under the circumstances, I shall dismiss all charges preferred herein and discharge the order to show cause why the license issued to the corporation should not be cancelled as improperly issued. Mohawk Savings and Loan Association owned the premises at the time of the hearing held herein. Since the license for the premises has not been revoked, it follows that no order should be entered herein declaring the premises ineligible to become the subject of any further license during a two-year period.

Accordingly, it is, on this 14th day of February, 1944,

ORDERED, that all charges herein be and the same are hereby dismissed, and that the orders to show cause be and the same are hereby discharged.

ALFRED E. DRISCOLL

Commissioner.

2. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - STRAIGHT WHISKEY  
SUBSTITUTED FOR BLENDED WHISKEY - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary )  
Proceedings against )

ARTHUR MULLANEY )  
284-286 Lyons Avenue )  
Newark, 8, N. J., )

Holder of Plenary Retail Consump- )  
tion License C-350, issued by the )  
Municipal Board of Alcoholic )  
Beverage Control of the City of )  
Newark. )  
- - - - - )

CONCLUSIONS )  
AND ORDER )

Arthur Mullaney, Pro Se. )  
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic )  
Beverage Control. )

BY THE COMMISSIONER:

The defendant has entered a non vult plea to a charge alleg-  
ing that he possessed an alcoholic beverage which was not genuine as  
labeled, in violation of R. S. 33:1-50.

Chemical analysis of an alcoholic beverage found in a bottle  
labeled "Calvert Special Blended Whiskey, 86.8 Proof", seized at the  
defendant's tavern on December 22, 1943, reveals the contents as a  
naturally colored straight whiskey instead of an artificially blended  
whiskey as described on the label. The defendant's explanation that  
a former employee may have tampered with the bottle presents no  
defense. A licensee is held to strict accountability for the condi-  
tion of his liquor stock. Re Kurian, Bulletin 517, Item 2.

Although it has been my policy, for the past year and a half,  
not to institute proceedings where only one questionable bottle is  
involved, this case falls within one of the exceptions thereto, viz.,  
that "the discrepancy in content is such as to permit only of the  
positive and unmistakable inference that the bottle has been  
'refilled' with another alcoholic beverage." See Re Vittoria Castle,  
Bulletin 557, Item 11. The fact that, as in this case, a straight  
whiskey is found in a bottle which should contain a blended whiskey,  
is probative evidence of a complete "top-to-bottom refill." For  
similar cases, cf. Re Fuccile, Bulletin 574, Item 8; Re Laengle,  
Bulletin 576, Item 11; Re Petrucelli, Bulletin 580, Item 2;  
Re Afro-American Democratic League, Inc., Bulletin 590, Item 3, in  
each of which a ten-day penalty was imposed. I shall suspend the  
license herein for a similar period.

Accordingly, it is, on this 16th day of February, 1944,

ORDERED, that Plenary Retail Consumption License C-350, here-  
tofore issued by the Municipal Board of Alcoholic Beverage Control of  
the City of Newark to Arthur Mullaney, for premises 284-286 Lyons  
Avenue, Newark, be and the same is hereby suspended for a period of  
ten (10) days, commencing at 2:00 A.M. February 21, 1944 and  
terminating at 2:00 A.M. March 2, 1944.

ALFRED E. DRISCOLL  
Commissioner.

3. DISCIPLINARY PROCEEDINGS - CHARGE OF SELLING ALCOHOLIC BEVERAGES TO A MINOR IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against )

JAMES J. MURPHY )  
26 South Warren Street )  
Trenton, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-233, issued by the Board of Commissioners of the City of Trenton. )  
----- )

Joseph J. Felcone, Esq., Attorney for Defendant-Licensee.  
Milton H. Cooper, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were served upon defendant alleging that, on December 3, 1943 and on divers dates prior thereto, he sold alcoholic beverages to, and permitted the consumption of alcoholic beverages by, Thelma ----, a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

A hearing was held on January 26, 1944, at which defendant entered a plea of not guilty. The Department produced a soldier who testified that, while he and the girl were present in defendant's premises on the evening of December 3, 1943, a bartender had served a beer and a "Tom Collins" to Thelma ----. The soldier testified also that he had previously visited defendant's premises with the same girl. Although a subpoena to appear had been served upon Thelma ----, she failed to appear. The hearing was adjourned until February 14, 1944 to give the Department additional time to produce her. On that date the Department stated that its investigation disclosed that she had left Trenton and had returned to Kentucky.

I suspect that this girl was under the age of twenty-one. I suspect also that she changed the year of her birth from 1924 to 1921 upon a birth certificate which she had exhibited to the bartender and to an investigator employed by the Municipal Board of Alcoholic Beverage Control of the City of Trenton, on a date prior to December 3, 1943. However, in the absence of any competent evidence as to the true age of the alleged minor, it is impossible to establish defendant's guilt. Under the circumstances, the charges will be nolle prossed. Re Ronchetti, Bulletin 519, Item 3. The licensee must be extremely cautious in the future concerning the service of alcoholic beverages to persons who may be minors.

Accordingly, it is, on this 18th day of February, 1944,

ORDERED, that the above case be nolle prossed.

ALFRED E. DRISCOLL  
Commissioner.

4. DISCIPLINARY PROCEEDINGS -- SALE OF ALCOHOLIC BEVERAGES TO MEMBERS OF THE ARMED FORCES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 2 OF STATE REGULATIONS NO. 37 - SALE OF ALCOHOLIC BEVERAGES TO A MINOR, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - 30 DAYS' SUSPENSION, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

THOMAS MAIONE  
T/a TOM'S TAVERN  
Route 25 near Ward Avenue  
Bordentown Township  
P.O. Bordentown, R.D., N.J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-6 issued by the Township Committee of the Township of Bordentown.

A. Millard Taylor, Esq. and Joseph J. Felcone, Esq.,  
Attorneys for Defendant-Licensee.  
Gaylord R. Hawkins, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee has pleaded non vult to the following charges:

"1. Notwithstanding the fact that a properly authorized officer of the armed forces of the United States had issued an operative order, effective in the Township of Bordentown Township, New Jersey, forbidding the sale of alcoholic beverages to any person wearing the uniform of the armed forces of the United States between the hours of 12:00 midnight and the local township opening hour for the following day, you, a licensee in said Township, on February 6, 1944, at about 12:30 A.M., sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons wearing the uniform of the armed forces of the United States, and did allow, permit and suffer such persons to consume such alcoholic beverages upon your licensed premises, in violation of Rule 2 of State Regulations No. 37.

"2. On the morning of February 6, 1944 you sold alcoholic beverages at your licensed premises to Sergeant Charles ----, a minor, in violation of R. S. 33:1-77.

"3. On the date aforesaid, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to Sergeant Charles ----, a person under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon your licensed premises, in violation of Rule 1 of State Regulations No. 20."

An examination of the reports of the ABC agents who participated in this investigation discloses that between midnight and 12:52 A. M. on the morning of February 6, 1944, alcoholic beverages were

sold and served to at least nine soldiers by a bartender in defendant's tavern. Among those thus served was Sergeant Charles ----, nineteen years of age, who was permitted to drink several glasses of beer.

As to penalty: In Re Keeley, Bulletin 553, Item 5, I said:

"Licensees, if they wish to stay in business, must obey the letter and spirit of the law. It is their further duty to comply with, and support to the fullest, the announced orders and regulations of the military authorities."

I shall suspend the license for a period of twenty days because of the violation set forth in the first charge. Re Keeley, supra, Re Garman, Bulletin 582, Item 8; Re Bailey, Bulletin 593, Item 12.

Since no aggravating circumstances appear, I shall suspend the license for an additional period of ten days because of the violations set forth in the second and third charges.

Because of the plea, five days will be remitted from the total penalty, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 18th day of February, 1944,

ORDERED, that Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Bordentown to Thomas Maione, t/a Tom's Tavern, Route 25 near Ward Avenue, Bordentown Township, be and the same is hereby suspended for twenty-five days, commencing at 2:00 A.M. February 28, 1944 and terminating at 2:00 A.M. March 24, 1944.

ALFRED E. DRISCOLL  
Commissioner.

5. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN SOLIDS, ACIDS AND COLORING - PREVIOUS RECORD - 60 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against )

JULIA KISH ALEX )  
119 Genesee Street )  
Trenton, 10, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-201, issued by the Board of Commissioners of the City of Trenton. )  
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Julia Kish Alex, Pro Se.  
Edward F. Hedges, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleads non vult to charges alleging that, on October 5, 1943, she possessed a quart bottle labeled "Schenley's Royal Reserve Blended Whiskey 86 Proof" and a quart bottle labeled "Philadelphia Blended Whiskey 86.8 Proof", containing alcoholic beverages which were not genuine as labeled, such possession being in violation of R. S. 33:1-50.

On the date mentioned, agents of the Department of Alcoholic Beverage Control, while making a retail inspection, seized three bottles on the premises of the licensee. Upon analysis, the contents of two of the three bottles were disclosed to vary substantially in the amount of solids, acids and artificial coloring from that contained in authentic samples of the beverage in question.

On April 7, 1941, the licensee, operating under the name of Julia Kish, which was her name prior to her marriage, had her license suspended for a period of thirty days for the same offense. Re Kish, Bulletin 454, Item 3. The penalty imposed at that time was a severe one because of the aggravated circumstances. One might infer that the imposition of such a penalty would impress upon the licensee that a second offense of the same nature would merit a much more severe penalty. Apparently, the licensee has chosen to disregard the previous warning. Such being the case, a penalty of sixty days' suspension will be imposed at this time. Any further violation of the Alcoholic Beverage Law or the regulations of the Department of Alcoholic Beverage Control may result in revocation of her license.

Accordingly, it is, on this 23rd day of February, 1944,

ORDERED, that Plenary Retail Consumption License C-201, issued by the Board of Commissioners of the City of Trenton to Julia Kish Alex, for premises 119 Genesee Street, Trenton, be and the same is hereby suspended for a period of sixty (60) days, commencing at 2:00 A. M. February 29, 1944 and terminating at 2:00 A.M. April 29, 1944.

ALFRED E. DRISCOLL  
Commissioner.

6. DISCIPLINARY PROCEEDINGS - SALE OF WINE IN VIOLATION OF RULE 12 OF STATE REGULATIONS NO. 20 - DELIVERY OF WINE WITHOUT APPROPRIATE LABEL IN VIOLATION OF STATE REGULATIONS NO. 24 - 20 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against )

CARMELO CANNIZZARO )  
33 Aspen Street )  
Passaic, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Winery License )  
No. V-39, issued by the State )  
Commissioner of Alcoholic Beverage )  
Control. )

-----)

Nicholas Martini, Esq., Attorney for Defendant-Licensee.  
Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The following charges were preferred against the defendant-licensee:

"1. On or about September 18, 1943 you delivered to Joseph DeLorenzo, a person not holding a license under the State Alcoholic Beverage Law (Revised Statutes, Title 33, Chapter 1), eight one-gallon glass jugs of wine intended by Joseph DeLorenzo for delivery, by gift or otherwise, to customers or prospective customers in the course of his business, in violation of Rule 12 of State Regulations No. 20.

"2. On or about the aforesaid date, you packaged, and actually so shipped, the aforesaid eight one-gallon glass jugs of wine, all of which bore no label, such packaging and shipping being in violation of State Regulations No. 24, which provide that wine packaged for intrastate shipment must bear the same type of label as is required by Federal Alcohol Administration Regulations No. 4 (relating to wine mislabeling and advertising) for wine packaged for shipment in interstate or foreign commerce."

At the hearing, defendant entered a plea of not guilty as to charge (1) and guilty as to charge (2).

With respect to charge (1), the testimony discloses that the defendant, the holder of a plenary winery license, personally delivered wine to a restaurant operated by Joseph DeLorenzo, a non-licensee, in the City of Passaic. Agents of the Department of Alcoholic Beverage Control testified that they had purchased and were served wine at that restaurant on the very day the above delivery was made. The record further discloses that the defendant had made or caused to be made other deliveries to this same restaurant. The story told by the ABC agents is corroborated by the testimony of additional disinterested witnesses. Under the circumstances, I cannot place any faith in defendant's testimony that he did not know that the wine was to be resold.

After having carefully studied the entire record, I have reached the conclusion that the defendant Cannizzaro knew or should have known that the wine sold by him to the restaurateur was going to be resold or otherwise used by the latter in the course of his business. Rule 12 of Regulations No. 20 provides as follows:

"No licensee shall deliver within this State to any person not holding a license under the Alcoholic Beverage Law, alcoholic beverages intended by such person for delivery, by gift or otherwise, to customers or prospective customers in the course of his business."

With respect to charge (2), counsel for the defendant offers in mitigation of his admitted violation a statement to the effect that the failure of the wine jugs to bear appropriate labels was due to carelessness. In a matter so important as the labeling and appropriate placing of indicia of tax payment, the excuse of carelessness cannot be accepted.

The defendant's license will be suspended for twenty (20) days.

Accordingly, it is, on this 23rd day of February, 1944,

ORDERED, that Plenary Winery License No. V-39, issued by the State Commissioner of Alcoholic Beverage Control to Carmelo Cannizzaro, for premises 33 Aspen Street, Passaic, be and the same is hereby suspended for a period of twenty (20) days, commencing at 12:01 A.M. February 28, 1944 and terminating at 12:01 A.M. March 19, 1944.

ALFRED E. DRISCOLL  
Commissioner.

7. AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - LICENSEE PAID FINE OF \$100.00 - LICENSE SUSPENDED FOR 10 DAYS IN DISCIPLINARY PROCEEDINGS - APPLICATION TO LIFT GRANTED.

In the Matter of Petition by )  
IRENE SERTI )  
Tappan Road )  
Norwood, N. J. )

ON PETITION  
CONCLUSIONS AND ORDER

to lift the automatic suspension )  
of License C-5, issued by the )  
Borough Council of the Borough )  
of Norwood. )  
-----)

Berthold Vorsanger, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

It appears from the petition filed herein that, on February 16, 1944, the licensee pleaded guilty in the First Criminal Judicial Court of the County of Bergen to a charge alleging that she had sold alcoholic beverages to minors and that as a result of said conviction she has paid a fine of \$100.00 imposed by said court. It further appears from the petition and from the records of the Department of Alcoholic Beverage Control that the Borough Council of the Borough of Norwood in disciplinary proceedings had previously suspended petitioner's license for a period of ten days, effective from September 20, 1943, at 2:00 A.M., to September 30, 1943, at 2:00 A.M., after the licensee, in said proceedings instituted by the Borough, had pleaded guilty to charges of selling alcoholic beverages to minors.

The criminal proceedings and the charges in the disciplinary proceedings were based upon the same facts. Because of the criminal conviction, petitioner's license has been automatically suspended for the balance of its term. R. S. 33:1-31.1. The petitioner herein prays that the automatic suspension may be lifted.

This case involves a sale of alcoholic beverages to minors, one being eighteen years and the other nineteen years of age. It has been the policy of this Department to lift an automatic suspension when and only when the license has been suspended for what appears in view of all the facts to be a sufficiently penalizing length of time. Re Solitare, Bulletin 538, Item 4.

Under all the circumstances, the penalty imposed by the Borough Council of the Borough of Norwood appears to have been adequate. Hence, I shall grant the relief prayed for in the petition.

Accordingly, it is, on this 23rd day of February, 1944,

ORDERED, that the automatic suspension of License C-5 held by Irene Serti, issued by the Borough Council of the Borough of Norwood for premises on Tappan Road, be lifted, and said license is hereby restored to full force and operation, effective immediately.

ALFRED E. DRISCOLL  
Commissioner.

8. DISCIPLINARY PROCEEDINGS - FRONT - EXERCISING THE RIGHTS AND PRIVILEGES OF THE LICENSE PRIOR TO TRANSFER - 60 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against )  
 URSULLA MAZEIKIS )  
 201 Second Street )  
 Trenton, 10, N. J., )  
 Holder of Plenary Retail Consumption License C-64, issued by the Board of Commissioners of the City of Trenton. )

CONCLUSIONS AND ORDER

Ursulla Mazeikis, Pro Se,  
 Gaylord R. Hawkins, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded guilty to a charge alleging that, between February 6, 1934 and January 7, 1944, she exercised the privileges of the successive licenses issued to her son, Joseph, in violation of R. S. 33:1-26.

The defendant became a naturalized citizen of this country in April 1942. Prior thereto, she was a national of Lithuania and was thus disqualified from holding a liquor license. See R. S. 33:1-25. Accordingly, she caused the original license for these premises, which was issued February 6, 1934, to be taken in the name of her son, Joseph. This unlawful situation continued until January 7, 1944, when the license was transferred from her son to herself.

The license for these premises has never heretofore been suspended. The usual penalty of sixty days, therefore, will be imposed. Cf. Re Scharmberg, Bulletin 540, Item 4; Re Katsch and Paulsen, Bulletin 551, Item 9; Re Gebhardt, Bulletin 555, Item 11; Re D'Anna, Bulletin 565, Item 12.

Accordingly, it is, on this 25th day of February, 1944,

ORDERED, that Plenary Retail Consumption License C-64, heretofore issued by the Board of Commissioners of the City of Trenton to Ursulla Mazeikis, for premises 201 Second Street, Trenton, be and the same is hereby suspended for a period of sixty (60) days, commencing at 2:00 A.M. March 1, 1944 and terminating at 2:00 A.M. April 30, 1944.

ALFRED E. DRISCOLL  
 Commissioner.

- 9. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEES TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - SALE BY CLUB LICENSEE TO NON-MEMBERS, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 7 AND R. S. 33:1-2 - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against )

GEO. E. BRUNNER 3rd WARD )  
 DEMOCRAT CLUB )  
 305 Benson Street )  
 Camden, N. J., )

CONCLUSIONS AND ORDER

Holder of Club License CB-2 )  
 issued by the Municipal Board of )  
 Alcoholic Beverage Control of the )  
 City of Camden. )  
 ----- )

Anthony F. Marino, Esq., Attorney for Defendant-Licensee.  
 Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant was served with charges alleging, in substance, that it (1) falsely concealed in its application for a club license the interest of seven club members in the license and in the business conducted thereunder, in violation of R. S. 33:1-25; (2) knowingly aided and abetted the said seven club members to exercise the rights and privileges of its license, in violation of R. S. 33:1-52; (3) sold, served and delivered alcoholic beverages on Sunday, July 4, 1943, in violation of the municipal ordinance; and (4) sold alcoholic beverages to persons other than bona fide members and their bona fide guests, in violation of Rule 5 of State Regulations No. 7 and R. S. 33:1-2.

Defendant, through its attorney, pleaded guilty to charge (3) and not guilty to charges (1), (2) and (4).

The defendant club, organized in 1932, has held a club license to sell alcoholic beverages since April 19, 1938.

The testimony of an investigator of the Department of Alcoholic Beverage Control discloses that, upon inspection of the minute book of the corporate defendant, he discovered that at a meeting of the club members on December 16, 1941, the following excerpt appeared in the minutes:

"There was a lengthy discussion by various members of the house committee in reference to their inability to further serve as members of the bar committee and asked to be relieved of the burden in view of the improved financial condition of the club. Ettore Cetti then made a motion that the members of the bar committee continue to serve in their previous capacity and to act as trustees of the club for they would be compensated for any monies over and above all expenses to operate the club received at the bar. Motion seconded by Henry Amandeo, passed unanimously."

On May 26, 1943 the investigator obtained a statement from Daniel Galasso, who was then president of the defendant club. In this statement the following questions and answers appear:

- "Q Who actually works behind and operates the bar?  
 A There are seven members of the house committee now, there used to be twenty, and each of us takes his turn at the bar work so as to keep the organization together, and we have one old man on salary, to clean up.  
 Q What salary do the house committee members receive?  
 A They don't receive any salary. Like myself, these boys have been on this same committee since we got our charter in 1937, and we never received anything for ourselves, but when we got out of debt and got a few dollars in the treasury, the members voted that in the future the members of this house committee that does the work would receive all the profits from the bar receipts after all expenses of the club are paid, and we have been doing that ever since then. We divide what is left each month among the seven of us.  
 Q Who are the members of this house committee?  
 A Myself, Joseph Cirrelli, Joseph Santone, Alfred DiPiero, James Mucci, Geo. Simmons and Henry Amandeo.  
 Q How long have you been dividing these profits?  
 A Since December 1941." (Underscoring ours)

On the same day Joseph Cirrelli, who was then treasurer of the club, and Joseph Santone, who was then financial secretary of the club, gave statements to the investigator wherein they acknowledged that the statement given by President Galasso represented the true story as to the operation of the club.

The Cash Book of the financial secretary discloses that the club received small weekly profits from the sale of alcoholic beverages between April 30, 1938 and December 5, 1941. Between the latter date and April 13, 1943 (the last entry) there is no further record of any such profits. Another record of the financial secretary discloses the amount of alcoholic beverages which was sold weekly between January 6, 1939 and December 5, 1941, and nothing as to the sale of alcoholic beverages beyond the latter date.

Alfred DiPiero, James Mucci and Henry Amandeo testified at the hearing that each member of the bar committee acted for a week at a time as bartender. DiPiero testified that, since December 1941, the weekly profits, which averaged about \$20.00 per week, were turned over to him by the respective bartenders and used to pay for the license fee and for social affairs. He says that he kept the money at home, but apparently he kept no records of the amount he received and disbursed. He says that he personally received no profits from the operation of the bar. Mucci and Amandeo testified that they turned over to DiPiero the money they received while acting as bartenders and that they received no profits from the operation of the bar.

The Vice-President of the club, Louis DiRenzo, testified that the club did not pay for the license, and neither ordered nor paid for the alcoholic beverages sold in the barroom. In fact, the liquor business had been turned over to seven members of the club who assumed sole responsibility for the operation of the same. It is immaterial whether these persons made a profit or not. The fact is that the club licensee had, contrary to law, abdicated its authority and in effect turned over the license to third parties.

After considering the minutes, the additional evidence set forth above, and the absence of any records accounting for profits since December 1941, I find defendant guilty as to charges (1) and (2).

As to charge (4): An inspector of the Alcoholic Beverage Control Department stated that when he visited defendant's premises on Sunday, July 4, 1943, he saw three French sailors seated at a table drinking beer. The President of the club admitted to the ABC inspector that the sailors were not members or bona fide guests of any member. I find defendant guilty as to charge (4).

Club licenses which authorize sale of alcoholic beverages only to club members and their bona fide guests are issued at a fee substantially less than that chargeable for the plenary retail consumption license which authorizes sale to the general public. The purpose of the law in authorizing the issuance of club licenses was to permit bona fide clubs to dispense alcoholic beverages to their members and their guests as a service to those members. It was never intended that the club license should be used by private individuals to operate a licensed business in competition with other retail licensees who pay a much higher fee. See Re Fourth Ward Colored Republican Club, Bulletin 599, Item 7.

Defendant has a prior record. In December 1942 its license was suspended for thirty days after it had pleaded guilty to charges of selling alcoholic beverages on Sunday, of selling to non-members, and of selling for off-premises consumption. In view of the previous record, defendant's admission of guilt with respect to charge (3), namely, the sale of alcoholic beverages during prohibited hours, and the finding of guilt with respect to charge (4), namely, the sale of alcoholic beverages to non-members, are sufficient to warrant the revocation of the license.

Accordingly, it is, on this 28th day of February, 1944,

ORDERED, that Club License CB-2, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Geo. E. Brunner 3rd Ward Democrat Club for premises 305 Benson Street, Camden, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL  
Commissioner.

10. DISCIPLINARY PROCEEDINGS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - ILLEGAL SITUATION CORRECTED - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 3 DAYS.

In the Matter of Disciplinary Proceedings against

JOSEPH P. CLANCY  
T/a Clancy's Cafe  
800 Fern Street  
Camden, N. J.,

Holder of Plenary Retail Consumption License C-60, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden, and transferred during the pendency of these proceedings to JOSEPH P. CLANCY and JAMES DURKIN, for the same premises.

CONCLUSIONS AND ORDER

William T. Cahill, Esq., Attorney for Defendant-Licensee.  
Gaylord R. Hawkins, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that he aided and abetted James A. Durkin to exercise the privileges of his license.

For more than ten years the defendant has operated a tavern at the premises in question. He has never heretofore been cited in disciplinary proceedings for any violations whatever.

As a result of an ailment of which he has suffered for the past four or five years, the defendant has become totally blind. For this reason he was compelled, in November 1942 (since which time he has required almost constant hospitalization), to entrust the conduct of his business to James Durkin. The manner in which this was accomplished, however, was contrary to the Alcoholic Beverage Law (R. S. 33:1-26) since it virtually constituted James Durkin as the licensee in the place and stead of the defendant.

When the parties were advised that their arrangement was violative of the cited statute, they entered into a formal partnership agreement and, pending these proceedings, caused the license to be transferred into both names. The prior unlawful situation has thus been fully corrected.

James Durkin, so far as can be ascertained, has at all times been fully qualified to hold a liquor license in his own right, and no reason is suggested why he, or the defendant, should deliberately attempt to conceal his connection with the tavern in question. Had they originally been properly advised, they undoubtedly would have effected a complete compliance with the law. While ignorance of the law affords no excuse for the violation, the sympathetic consideration engendered by the circumstances of this case impels the conclusion that the penalty imposed should be a lenient one.

Lest there be any misunderstanding, however, I desire to point out that this type of violation, whereby a licensee illegally usurps the prerogatives of an issuing authority by enabling a non-licensee to exercise the rights and privileges of a liquor license, is most serious and warrants, in the usual case, a stern penalty. Cf. Re Stetz, Bulletin 512, Item 3; Re DiPaolo, Bulletin 568, Item 5; Re Beringer, Bulletin 571, Item 10.

So far as the instant case is concerned, I am of the opinion that justice will be served by suspending the license herein for a three-day period.

Accordingly, it is, on this 28th day of February, 1944,

ORDERED, that Plenary Retail Consumption License C-60, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Joseph P. Clancy, t/a Clancy's Cafe, for premises 800 Fern Street, Camden, and transferred during the pendency of these proceedings to Joseph P. Clancy and James Durkin for the same premises, be and the same is hereby suspended for a period of three (3) days, commencing at 7:00 A.M. March 6, 1944 and terminating at 7:00 A.M. March 9, 1944.

ALFRED E. DRISCOLL  
Commissioner.

11. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A PERSON ACTUALLY OR APPARENTLY INTOXICATED, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 20 - 40 DAYS' SUSPENSION, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against  
ADAM & HELEN ROSKOSKY  
T/a TROPICAL GARDEN  
Rte. S-28 and Parker Street  
East Brunswick Township  
P.O. Box 142, South River, N.J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-2, issued by the Township Committee of East Brunswick Township.  
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Stanley S. Dickerson, Esq., Attorney for Defendant-Licensees.  
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensees plead non vult to the charge that they sold, served to and permitted the consumption of alcoholic beverages by one Pfc. Jimmie ----, a person actually or apparently intoxicated, in violation of Rule 1 of State Regulations No. 20.

The departmental file discloses that, on January 14, 1944, at about 11:30 P.M., three soldiers entered the licensed premises of defendants. According to the statement of Sergeant Gail ----, one of the soldiers, Private Jimmie ---- was intoxicated at the time he entered the defendants' place of business. Nevertheless, two drinks of whiskey were served to the soldier, who, with his head resting on the bar, fell asleep shortly after the service of the second drink. A taxi cab arrived at the licensed premises a short time after the

closing hour and the driver of the cab, with the assistance of one of the soldiers, carried Private Jimmie [redacted] out of the tavern.

Sale or service of alcoholic beverages to a man in the armed services, when that person is actually or apparently intoxicated, warrants a severe penalty. I shall, therefore, suspend the license of the defendants for a period of forty days, less five days remission for the plea entered herein, making a net suspension of the license for thirty-five days. Re Sacco, Bulletin 589, Item 4.

Accordingly, it is, on this 29th day of February, 1944,

ORDERED, that Plenary Retail Consumption License C-2, issued by the Township Committee of East Brunswick Township to Adam & Helen Roskosky, t/a Tropical Garden, for premises Rte. S-28 and Parker Street, East Brunswick Township, be and the same is hereby suspended for thirty-five (35) days, commencing at 2:00 A.M. March 6, 1944 and terminating at 2:00 A.M. April 10, 1944.

*August E. Driscoll*  
Commissioner.