

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

BULLETIN 676

AUGUST 3, 1945.

1. MORAL TURPITUDE - CRIME OF ASSAULT WITH INTENT TO RAPE INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - ON APPLICATION TO LIFT PETITIONER MUST PROVE THAT HE HAS CONDUCTED HIMSELF IN A LAW-ABIDING MANNER FOR A PERIOD OF AT LEAST FIVE YEARS FROM THE DATE OF HIS RELEASE FROM A PENAL INSTITUTION - FIVE YEAR PERIOD NOT SHOWN HEREIN - APPLICATION TO LIFT DENIED.

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

CONCLUSIONS

Case No. 428.  
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BY THE COMMISSIONER:

Petitioner herein, pursuant to R. S. 33:1-31.2, seeks to have any disqualification removed by reason of his being convicted of a crime involving moral turpitude.

The police records disclose that petitioner was convicted in a Court of Special Sessions of the crime of assault with intent to rape. He was sentenced on November 27, 1940 to a county penitentiary for a term of six months. He remained therein until December 24, 1940, at which time he was released and placed on probation for a period of three years. Petitioner testified that he and another youth "picked up" a girl on a public highway and the girl made a complaint that she had been attacked, as a result of which petitioner was apprehended by the police.

The crime of assault with intent to rape involves moral turpitude. Consequently, petitioner is disqualified from working for a liquor licensee or holding a liquor license in this State. R. S. 33:1-25, 26.

Inasmuch as petitioner was released from the penal institution on December 24, 1940, the merits of the within petition cannot be considered at this time. One of the requirements necessary for the lifting of a disqualification is that petitioner must have conducted himself in a law-abiding manner for a period of five years last past. R. S. 33:1-31.2; Re Case No. 250, Bulletin 546, Item 4. It has been held, in determining whether a petitioner's conduct has been law-abiding for five years last past, that the time of confinement in a penal institution because of conviction of a crime is not part of the probationary period. See Re Case No. 16, Bulletin 222, Item 12; Re Case No. 270, Bulletin 565, Item 10.

Since five years have not elapsed from the time petitioner was released from the county penitentiary, I shall deny the within petition.

ALFRED E. DRISCOLL  
Commissioner.

Dated: July 20, 1945.

New Jersey State Library

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM, IN VIOLATION OF RULE 6 OF STATE REGULATIONS NO. 30 - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary  
Proceedings against

UNITED ITALIAN COOPERATIVES, INC.  
2310-12 Summit Avenue  
Union City, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump-  
tion License C-109, issued by the  
Board of Commissioners of the City  
of Union City.

Defendant-licensee, by Eduardo Mainelli, President.  
Harry Castelbaum, Esq., appearing for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that it sold a 1/2 gallon bottle of "Opici California Burgundy Wine" below the established minimum consumer price.

On June 29, 1945 an ABC agent purchased the product in question from the defendant's bartender for the sum of \$1.45, or thirty-five cents below the fixed Fair Trade price. See Bulletin 651, page 5.

No defense is discernible in the defendant's explanation that it relied upon a representation of the producer of the wine that the price had been reduced. The official Departmental bulletins furnish the sole source of the effective minimum prices and reliance placed upon any other "hearsay" information is unwarranted. Cf. Re Tiger Food Co., Inc., Bulletin 377, Item 11; Re Weiner, Bulletin 441, Item 13; Re City Wine and Liquor Stores, Inc., Bulletin 490, Item 2.

Since the defendant's record is otherwise clear, the usual ten-day penalty, less five days for the plea, will be imposed. Re Gold's Drug Stores, Bulletin 640, Item 9; Re Melnick, Bulletin 645, Item 9; Re Silver Rod Stores, Inc., Bulletin 649, Item 4.

Accordingly, it is, on this 24th day of July, 1945,

ORDERED, that Plenary Retail Consumption License C-109, issued by the Board of Commissioners of the City of Union City to United Italian Cooperatives, Inc., for premises 2310-12 Summit Avenue, Union City, be and the same is hereby suspended for a period of five (5) days, commencing at 3:00 a.m. July 30, 1945, and terminating at 3:00 a.m. August 4, 1945.

ALFRED E. DRISCOLL  
Commissioner.

3. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN LICENSE APPLICATION  
CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO  
EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - ILLEGAL  
SITUATION CORRECTED - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.

In the Matter of Disciplinary )  
Proceedings against )  
BRONISLAW KARBOWSKI )  
E/S Black Horse Pike, )  
So. Malaga Road )  
Monroe Township, Gloucester )  
County )  
P.O. Williamstown, R.F.D. 1, N.J.,)

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption )  
License C-9 for fiscal year 1944-45, )  
and transferred during the pendency )  
of these proceedings to )  
MARY MILLER, )  
(same premises) )  
Holder of Plenary Retail Consumption )  
License C-9 for the current 1945-46 )  
fiscal year; both issued by the )  
Township Committee of Monroe )  
Township. )  
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Lawrence D. Meyers, Esq., Attorney for Defendant-licensee.  
Harry Castelbaum, Esq., appearing for Département of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

Charges were preferred against the defendant, Bronislaw Karbowski, alleging that (1) he falsified his license application by failing to reveal that Magdalena Szczurek had an interest in his license (transferred to him on December 6, 1944) and the business conducted thereunder; and (2) he permitted Magdalena Szczurek, a non-licensee, to exercise the privileges of his license. Defendant pleads guilty to both charges.

Magdalena Szczurek is a resident of Pennsylvania and for a number of years has operated a licensed tavern in that State. Bronislaw Karbowski was her bartender in Pennsylvania. She states that in the latter part of 1944 she desired to move to the country and decided to sell her Pennsylvania business. Having been approached by two prospective customers, and feeling certain that one of them intended to buy her Pennsylvania premises, she entered into a contract to purchase the premises presently licensed in Monroe Township. Subsequently she was unable to complete the sale of her Pennsylvania business. Faced with the prospect of having two establishments on her hands, each requiring a liquor license, she arranged for her bartender to acquire by transfer the Monroe Township license. Title to the Monroe Township real estate was delivered to her on or about December 1, 1944. Pursuant to the agreement, Bronislaw Karbowski operated the New Jersey tavern for her.

When some of the members of the Szczurek family objected to moving to New Jersey, she decided to sell the New Jersey property and had acquired a bona fide purchaser for the same at about the time the violation was discovered. The premises, as well as the license, have now been transferred to the new owner, who appears to be fully qualified.

Magdalena Szczurek, with an inadequate education, appears to have taken too much for granted in her assumption that the sale of her Pennsylvania business was imminent. It is likewise regrettable that she did not take sufficient time to ascertain the requirements of the New Jersey Law before entering into her contract to purchase the Monroe Township property.

Although these proceedings were instituted during the 1944-45 licensing period, they do not abate but remain fully effective against the renewal license for the present fiscal year 1945-46. State Regulations No. 16.

Accordingly, it is, on this 24th day of July, 1945,

ORDERED, that Plenary Retail Consumption License C-9, issued by the Township Committee of Monroe Township to Bronislaw Karbowski, for premises on E/S Black Horse Pike, So. Malaga Road, Monroe Township, and transferred during the pendency of these proceedings (and renewed for the present 1945-46 fiscal year) to Mary Miller, for the same premises, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. July 31, 1945, and terminating at 2:00 a.m. August 10, 1945.

ALFRED E. DRISCOLL  
Commissioner.

4. UNLICENSED RESTAURANTS - HEREIN OF A SAFETY PROCEDURE FOR  
PROPRIETORS OF UNLICENSED RESTAURANTS WHEN CONFRONTED WITH CUSTOMERS  
WHO "CARRY THEIR OWN."

July 24, 1945

Mr. Anthony Cavallo  
Hoboken, N. J.

Dear Mr. Cavallo:

I have your letter of July 19th, stating, in part:

"I have no beer license, but people come in and want to have beer with spaghetti. When they find out I have none they try to bring in their own from outside. Is it against the law to allow it?"

The proprietor of a restaurant not licensed for the sale of alcoholic beverages may not sell, serve or traffic in alcoholic beverages under any pretext, directly or indirectly. For such a proprietor or his employees to do any of these is a misdemeanor. Furthermore, such a proprietor and his employees are prohibited from mixing, preparing or servicing any alcoholic beverages for customers even though the customers "bring in their own from outside."

Your writing to me in this matter is a strong indication of your good faith -- of your conscientious desire not to violate the law. I do not suspect that you have the intention to commit any of the violations mentioned in the preceding paragraph or that you intend knowingly to permit your employees to commit such violations.

But why take chances? Assume that you permit a few regular customers to bring in beer and consume it with their meal, and that neither you nor any of your employees serve, service or handle the beer in any way. That would not be unlawful. Then, however, other

customers would wish to do the same and almost certainly the practice would spread. Soon, regardless of your good intentions and regardless too of your careful supervision, there would be grounds for reasonable persons to suspect your operation of a "beer place" where unlawful sales, unlawful service, and other unlawful practices were engaged in. And there might be not only the suspicion or color of violations but violations in fact, for however close your supervision there would be constant danger of a slip.

I have consistently discouraged the practice of permitting consumption of alcoholic beverages in restaurants and other public places not licensed to sell such beverages. You are the master of your establishment and the only safe practice for you to follow, in order to avoid the possibility of embarrassment and perhaps of serious trouble, is to permit no one to drink alcoholic beverages in your restaurant. I cordially and strongly recommend that you follow this practice.

Very truly yours,  
ALFRED E. DRISCOLL  
Commissioner.

5. DISCIPLINARY PROCEEDINGS - CHARGE OF FAILURE TO CLOSE LICENSED PREMISES AND PERMITTING PERSONS OTHER THAN BONA FIDE EMPLOYEES TO REMAIN ON LICENSED PREMISES, IN VIOLATION OF RULE 2 OF STATE REGULATIONS NO. 40, DISMISSED - CHARGE OF HINDERING AND FAILING TO FACILITATE INVESTIGATION, AS REQUIRED BY R. S. 33:1-35, DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary  
Proceedings against )

TONY ZEMETRO )  
169 Avenue E )  
Bayonne, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-18 for the 1944-45 )  
and 1945-46 fiscal years, issued by )  
the Board of Commissioners of the )  
City of Bayonne. )

Ben M. Horwech, Esq., Attorney for Defendant-licensee.  
Harry Castelbaum, Esq., appearing for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

The defendant pleads not guilty to charges alleging (1) his failure to have his premises closed between 12:00 midnight, March 17th, and 7:00 a.m. Sunday, March 18, 1945 and permitting persons other than himself and bona fide employees to remain on the premises during prohibited hours, in violation of Rule 2 of State Regulations No. 40, and (2) failing to facilitate an investigation of his licensed premises, as required by R. S. 33:1-35.

The suspicions of a conscientious member of the Bayonne police force appear to have been aroused by the presence of at least two persons on the licensed premises after the curfew hour, and by the failure of the licensee to promptly admit the policeman for inspection.

A perusal of the testimony fails to disclose any evidence supporting the first charge. The three persons who appear to have been on the licensed premises between 12:00 midnight and 12:25 a.m. were apparently engaged in the legitimate task of cleaning the tavern. An inspection of the premises by police officers and agents of this Department failed to disclose any evidence that sales or consumption had occurred following the closing hour (then 12:00 midnight, pursuant to State Regulations No. 40). The presence of the licensee and two employees did not constitute a violation of the cited Regulations.

Although there is some evidence that the defendant was unduly hesitant in admitting the patrolman, the testimony is not sufficient to support the serious charge of hindering and failing to facilitate an investigation. Cf. Nunziato, Bulletin 558, Item 3. The licensee's unfortunate hesitancy appears to have been a momentary mistake of judgment rather than a deliberate effort to hinder the police.

The Department having failed to sustain the burden of proof, the charges will be dismissed.

Accordingly, it is, on this 24th day of July, 1945,

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

ALFRED E. DRISCOLL  
Commissioner.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.

In the Matter of Disciplinary  
Proceedings against

FRANK ARGENZIANA

T/a FRANKS TAVERN

Madison Hill Rd. & Palisade Ave.

Clark Township

P.O. RFD 2, Rahway, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump-  
tion License C-8 for the fiscal  
year 1944-45 and C-6 for the  
fiscal year 1945-46, issued by  
the Board of Commissioners of the  
Township of Clark.

Frank Argenziana, Defendant-licensee, Pro se.

Edward F. Ambrose, Esq., appearing for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded guilty to a charge alleging that, on June 2, 1945, he possessed a 4/5 quart bottle labeled "Southern Comfort--Liqueur", which bottle contained an alcoholic beverage not genuine as labeled, in violation of R. S. 33:1-50.

During the inspection of the defendant's open stock of liquor on his licensed premises on June 2, 1945, an inspector of the Federal Alcohol Tax Unit seized a 4/5 quart bottle labeled "Southern Comfort--Liqueur" when a preliminary test thereof indicated that the liquor was not genuine as labeled. Subsequent analysis of the contents of

the bottle in question by a Federal chemist revealed variation in color, acids and solids when compared with an analysis of a genuine sample. Defendant admitted refilling the bottle in question with another brand of liquor.

Defendant has no prior adjudicated record. While only one bottle is involved, the violation was deliberate. In view of this fact, I shall suspend the license for a period of ten days.  
Re Swiderski, Bulletin 674, Item 11.

Although this proceeding was instituted during the fiscal year 1944-45, it does not abate but remains fully effective against the renewal license for the 1945-46 fiscal year. State Regulations No. 16.

Accordingly, it is, on this 26th day of July, 1945,

ORDERED, that Plenary Retail Consumption License C-6 for the fiscal year 1945-46, issued by the Board of Commissioners of the Township of Clark to Frank Argenziana, t/a Franks Tavern, for premises on Madison Hill Road and Palisade Avenue, Clark Township, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. August 1, 1945, and terminating at 3:00 a.m. August 11, 1945.

ALFRED E. DRISCOLL  
Commissioner.

7. DISCIPLINARY PROCEEDINGS - CHARGE OF POSSESSION OF ILLICIT ALCOHOLIC BEVERAGES, IN VIOLATION OF R. S. 33:1-50, DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary  
Proceedings against )

MICHAEL KEELEY )  
T/a CLIQUOT CLUB CAFE )  
15 North Illinois Avenue )  
Atlantic City, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-219 for the fiscal year 1942-43, issued by the Board of Commissioners of the City of Atlantic City. )  
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Emerson L. Richards, Esq., Attorney for Defendant-licensee.  
Abraham Merin, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to a charge alleging that he possessed a one-quart bottle labeled "Three Feathers The Aristocrat Blended Whiskey", which bottle contained an alcoholic beverage not genuine as labeled; such possession being in violation of R. S. 33:1-50.

On July 27, 1942 an agent of the Alcohol Tax Unit visited defendant's premises and tested 109 opened bottles of alcoholic beverages. He seized the bottle mentioned in the charge after it appeared from his preliminary tests that the contents of the bottle were not genuine as labeled.

At the hearing defendant testified that the bottle in question had been open for at least a month or two before the seizure and that neither he nor any of his employees had tampered with the contents thereof.

I have examined carefully the voluminous testimony given by the Federal chemist and the chemist who testified on behalf of defendant. Without attempting to set forth the discrepancies in the conclusions reached by these two qualified experts, it is my judgment that the slight variations between the contents of the seized bottle and the contents of bottles of the same product seized and opened for purposes of comparison may have been due to evaporation.

The Department has failed to sustain the burden of proof in establishing the guilt of the licensee. I shall, therefore, dismiss the charge.

Accordingly, it is, on this 26th day of July, 1945,

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

ALFRED E. DRISCOLL  
Commissioner.

8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM, IN VIOLATION OF RULE 6 OF STATE REGULATIONS NO. 30 - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary  
Proceedings against

SILVER ROD STORES, INC.  
12 Journal Square  
Jersey City 6, N. J.,

Holder of Plenary Retail Distribution License D-122 for the fiscal years 1944-45 and 1945-46, issued by the Board of Commissioners of the City of Jersey City.

CONCLUSIONS  
AND ORDER

Jacob E. Max, Esq. and Frank S. Farley, Esq.,

Attorneys for Defendant-licensee.

Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads non vult to the charge of selling a 4/5th quart bottle of Garrett's Virginia Dare White Wine below minimum consumer price published in Bulletin 651 of the Department of Alcoholic Beverage Control, in violation of Rule 6 of State Regulations No. 30.

The departmental file discloses that, on March 15, 1945, an ABC agent purchased a 4/5th quart bottle of Garrett's Virginia Dare White Wine for eighty-six cents, whereas the Fair Trade price for a 4/5th quart bottle of this particular brand of wine was ninety-six cents. See Bulletin 651. Defendant advertised the item in question at eighty-six cents in a local newspaper published on March 15, 1945.



Defendant, through its attorneys, stated that the manager in charge of defendant's establishment failed to notice the ten-cent increase in price of Virginia Dare White Wine from that shown in the previous minimum resale price pamphlet. It may well be that the violation was not deliberate but was due to carelessness. Nevertheless, the licensee is responsible for the acts of its agents and servants and their carelessness is not an excuse for a violation of the law. Grant Lunch Corp. v. Driscoll, 129 N.J.L. 408. To hold otherwise would open the door wide to deliberate violations perpetuated under the guise of honest mistakes. It is to be noted that, whether innocent or otherwise, these violations attract customer attention and thus, if permitted to go unpunished, would operate to the advantage of the violator and the disadvantage of those who carefully observe the Fair Trade price list.

Defendant's license was suspended for five days, effective January 29, 1945, as a result of being adjudged guilty of a similar violation. Under all the circumstances, I shall suspend the 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. Any further violations of any kind may well merit a very severe penalty.

Accordingly, it is, on this 31st day of July, 1945,

ORDERED, that Plenary Retail Distribution License D-122, issued for the fiscal year 1945-46 by the Board of Commissioners of the City of Jersey City to Silver Rod Stores, Inc., for premises 12 Journal Square, Jersey City, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 10:00 p.m. August 6, 1945, and terminating at 9:00 a.m. August 22, 1945.

ALFRED E. DRISCOLL  
Commissioner.

9. DISCIPLINARY PROCEEDINGS -- CHARGE OF SELLING ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS DISMISSED -- HEREIN OF THE EFFECT OF THE DEATH OF LICENSEE PENDING HEARING IN DISCIPLINARY PROCEEDINGS.

In the Matter of Disciplinary  
Proceedings against )

RAYMOND F. CAMPBELL )

T/a CHICK CAMPBELL )

9 South 3rd St. and )

233 Taylor Ave., in rear )

Camden, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-32 for the fiscal )  
year 1943-44, issued by the )  
Municipal Board of Alcoholic )  
Beverage Control of the City of )  
Camden. )

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Edward F. Ambrose, Esq., appearing for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

On November 12, 1943 the State Department of Alcoholic Beverage Control preferred a charge against the above licensee alleging, in effect, that he sold and served alcoholic beverages during prohibited hours on October 15, 1943, in violation of local ordinance.

Several days after this charge was brought the Department learned, for the first time, that Campbell had died on November 2, 1943. Hence, the license automatically lapsed and the disciplinary matter against the decedent came to an end. Re Brennan, Bulletin 113, Item 1.

However, on April 4, 1944, the Municipal Board of Alcoholic Beverage Control of the City of Camden, pursuant to R. S. 33:1-26, revived the license by extending it in the name of Raymond F. Campbell, Jr., Administrator, and simultaneously therewith transferred the license, as thus extended, to Albert Edward Ford. On August 17, 1944 the license was transferred to Elizabeth B. Ford, who has obtained renewal thereof for the current year.

A license may be suspended or revoked for proper cause, notwithstanding that such cause arose prior to transfer or extension or during the term of a prior license. State Regulations No. 16. Hence, the question arises as to whether proceedings should be brought against the present licensee.

After due consideration and in view of all the circumstances in this case, I do not believe that they should. The rule may be otherwise in cases involving different facts or circumstances or where the license has been transferred to a person who participated in the alleged violation.

Accordingly, it is, on this 31st day of July, 1945,

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

ALFRED E. DRISCOLL  
Commissioner.

10. DISCIPLINARY PROCEEDINGS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE, IN VIOLATION OF R. S. 33:1-52 - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.

In the Matter of Disciplinary  
Proceedings against

JOSEPH V. GALLO  
T/a MOUNT OLIVE TAVERN  
Highway 6, Budd Lake  
Mount Olive Township  
P.O. Netcong, N. J.,

Holder of Plenary Retail Consump-  
tion License C-6 for the fiscal  
year 1944-45, issued by the  
Township Committee of the Township  
of Mount Olive, and

CHARLES DAMELIO  
T/a MOUNT OLIVE TAVERN,

now holder of Plenary Retail Consump-  
tion License C-6, issued by said  
Township Committee

for the same premises.

# CONCLUSIONS

AND

ORDER

George S. Grabow, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads non vult to the charge alleging that he knowingly aided and abetted one Charles Damelio to exercise, contrary to R. S. 33:1-26, the rights and privileges of his plenary retail consumption license, in violation of R. S. 33:1-52.

The departmental file discloses that, on May 1, 1945, one Charles Damelio, pursuant to an agreement to purchase, took actual possession and control of the liquor business formerly owned by defendant Joseph V. Gallo. The plenary retail consumption license was continued in the name of Joseph V. Gallo for the months of May and June, 1945, despite the fact that he had relinquished all interest in the operation of the business. A new license was issued to Damelio effective July 1, 1945 for the current 1945-46 licensing period by the local issuing authority for the premises in question. It does not appear that Damelio was disqualified at any time from holding a liquor license.

Although the unlawful situation has now been corrected, the violation nevertheless warrants a suspension of the license. I shall, therefore, suspend the license for a period of ten days, which suspension shall be effective against Charles Damelio, the present licensee. Rule 2 of State Regulations No. 16.

Accordingly, it is, on this 31st day of July, 1945,

ORDERED, that Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Mount Olive to Charles Damelio, t/a Mount Olive Tavern, for premises on Highway 6, Budd Lake, Mount Olive Township, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. August 6, 1945, and terminating at 2:00 a.m. August 16, 1945.

ALFRED E. DRISCOLL  
Commissioner.

11. DISCIPLINARY PROCEEDINGS - CHARGE OF SELLING ALCOHOLIC BEVERAGES TO MINORS IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 DISMISSED - PERMITTING BRAWL ON LICENSED PREMISES IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against

JOHN P. TEEVAN and PETER LYNCH  
733-35 South Orange Avenue  
Newark, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-766 for the fiscal years 1944-45 and 1945-46, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

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Francis X. Kennealy, Esq. and Roy F. Dunn, Esq.,  
Attorneys for Defendant-licensees.  
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensees were charged with:

- (1) Sale of alcoholic beverages to minors, in violation of R. S. 33:1-77;
- (2) Permitting the consumption of alcoholic beverages by minors upon the licensed premises, in violation of Rule 1 of State Regulations No. 20;
- (3) Permitting a brawl on the licensed premises, in violation of Rule 5 of State Regulations No. 20.

With respect to the first two charges, it is my conclusion, after a careful study of the record, that the Department has failed to carry the burden of proof. While the testimony has raised serious questions in my mind with respect to the observance by the licensees of Rule 1 of State Regulations No. 20 and R. S. 33:1-77, I have decided the factual issues in favor of the defendants, and these charges will be dismissed.

The testimony, pro and con, on charge (3) likewise presents difficult questions of fact. On December 28, 1944, at about 11:00 p.m., Private William McCarrick, his wife Helen, Private Howard Lyons, his wife Margaret, together with Timothy Qualey (Howard's uncle) and John Lyons, Sr. (Howard's father), visited defendants' premises and, after momentarily stopping at the bar for some sandwiches and to order beverages, moved into an adjoining room, where they began to play shuffleboard. Shortly thereafter, John Teevan, one of the licensees, entered the premises. He, too, stopped momentarily at the bar for a drink. From that point on, it is impossible to reconcile the testimony of the various witnesses with respect to the events leading up to the brawl that occurred on the licensed premises shortly after Teevan's arrival. Admittedly, heads were cracked, blood was spilled, a table leg (or legs) was transformed into a shillelagh and applied with vigor and effectiveness. When the dust of battle settled, each side stoutly and traditionally insisted "he done it."

The damages seem to have been pretty evenly distributed. The two hundred twenty-pound Teevan (by contrast the other contestants appeared to have been lightweights) suffered a scratch on the back of the head and cheek, a knee injury and four loose teeth. The Lyonses (father and son) came out of the fight sporting head injuries (requiring stitches), while Private McCarrick received a back injury and Uncle Qualey somewhat lesser damages. The only one of the alleged participants who appears to have escaped injury, as well as notoriety, is a mysterious person in a lumber-jacket, allegedly on the side of Teevan, who, at an opportune moment, retreated to a telephone booth where he sat out the ebbing moments of the affray, the arrival and questioning of the police, and thereupon disappeared from the scene.

Teevan states that he entered the shuffleboard room after he heard a ripping and tearing sound, and observed the soldiers attempting to move one of the shuffleboards which, he insists, had previously been partially covered with paper to prevent its getting wet from a leak in the roof. It was a rainy night. It is his story that he asked the soldiers who had given them permission to move the board, and that the latter profanely demanded identification, and asked for his license. Thereupon he was "hit in the back of the ear", pushed, and, despite his 220 pounds, fell to the floor, with one of the soldiers on top of him and the other kicking him with his feet. The licensee insists that he called for help and attempted to escape "before the boys with the two shillelaghs" got him.

All the other available participants tell an entirely different story. While admitting that an effort was made to move the shuffleboard, they deny that it was moved, insist that Teevan was the aggressor, that he struck the first blow, as a result of which McCarrick was knocked to the floor, and that thereupon the licensee beset the visiting team with a leg torn from a nearby table. These witnesses insist that the man in the lumber-jacket took up the cudgels (in this case a chair) and actively participated in the brawl on the side of the licensee. Qualey stoutly insists he "got in the fight only to protect my brother-in-law from getting killed." The police were finally called into action by the bleeding Lyons, Sr. They found Private McCarrick semi-conscious, "stretched out on the floor and his wife bending over him."

Without in any way condoning the misguided effort on the part of the patrons to move the shuffleboard sans the permission of the licensees, it is my opinion that the severe injuries suffered by at least three of the patrons support their story that Teevan used force over and beyond that necessary to prevent the moving of the table or even to defend himself from attack if we accept his version of what took place. Undoubtedly the misguided effort of the shuffleboard players to lift the table from its moorings provoked Teevan. It did not, however, warrant the use of aggressive force by him. When customers become unruly, obstreperous or abusive, the proper procedure is to call the police. There is no justification, short of the acute need for emergent self-defense in the face of unexpected and unprovoked attack, for a licensee to resort to violence and, even then, the use of force should be restricted to that necessary to permit a strategic retreat for the purpose of calling the police. In the instant case, Teevan appears to have lacked the diplomatic finesse required of a tavern owner if he is to prevent brawls. Whatever the provocation, and irrespective of the cause, the licensees in the instant case appear not only to have failed to take effective steps to prevent the brawl from occurring on the premises, but one of them, by his participation, contributed to the intensity of the fight.

Accordingly, I find the defendants guilty of permitting and suffering a disturbance and brawl as charged. On this count, after giving full consideration to the alleged mitigating provocation, the license will be suspended for fifteen days.

Accordingly, it is, on this 31st day of July, 1945,

ORDERED, that Plenary Retail Consumption License C-766, issued for the 1945-46 fiscal year to John P. Teevan and Peter Lynch, for premises 733-35 South Orange Avenue, Newark, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. August 7, 1945, and terminating at 2:00 a.m. August 22, 1945.

ALFRED E. DRISCOLL  
Commissioner.

12. COURT DECISIONS - NEW JERSEY SUPREME COURT - ZICHERMAN v. STATE COMMISSIONER OF ALCOHOLIC BEVERAGE CONTROL - APPLICATION FOR WRIT OF CERTIORARI DENIED.

BERTHA ZICHERMAN, trading as  
BERT'S HORSESHOE BAR,

Prosecutor

-vs-

ALFRED E. DRISCOLL, Commissioner  
of the State Department of  
Alcoholic Beverage Control of  
the State of New Jersey,

Respondent

NEW JERSEY SUPREME COURT

ON CERTIORARI  
ORDER DISMISSING APPLICATION  
FOR WRIT OF CERTIORARI

This matter having come on for hearing before the Court at the Chambers of Justice Case, in Somerville, New Jersey, on an application for a Writ of Certiorari to review the Order of Honorable Alfred E. Driscoll, Commissioner of the Department of Alcoholic Beverage Control, made on the 14th day of April, 1944, whereby the license of the Prosecutor was suspended for the balance of the term ending July 30, 1944, in the presence of Schotland and Schotland, attorneys for the Prosecutor and Thomas L. Hanson, representing the Attorney General of the State of New Jersey, appearing for Alfred E. Driscoll, Commissioner of the State Department of Alcoholic Beverage Control of the State of New Jersey, and the respective counsel having been heard and the arguments presented having been considered by the Court, and the Court having determined the same;

It is, on this 28th day of July, 1945,

ORDERED, that the aforesaid application for a Writ of Certiorari be denied.

Clarence E. Case  
Supreme Court Justice

Thomas L. Hanson, Attorney,  
appearing for Walter D. Van Riper,  
Attorney General.

13. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.

In the Matter of Disciplinary  
Proceedings against

ALEXANDER NARZE

T/a AL'S BAR & GRILL

S/W cor. N. J. State Highway 36

and Palmer Avenue

Raritan Township (Monmouth County)

P.O. Box 263, Keansburg, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption,  
License C-3, issued by the Township  
Committee of the Township of Raritan.  
- - - - -

William C. Egan, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that he possessed one 4/5 quart bottle labeled "Calvert Reserve Blended Whiskey", two 4/5 quart bottles labeled "Gallagher and Burton's Black Label Blended Whiskey", and two 4/5 quart bottles labeled "Seagram's Seven Crown Blended Whiskey", the contents whereof not being genuine as labeled, in violation of R. S. 33:1-50.

On June 20, 1945 an investigator of the State Department of Alcoholic Beverage Control seized the above described five bottles of whiskey when preliminary tests thereof indicated that the contents of said bottles had different characteristics than the whiskey named on the label. Subsequent analysis of the said whiskey by the Department chemist disclosed that said whiskey was not genuine as labeled.

Defendant disclaimed all knowledge of the violation. It is well established that a licensee must be held strictly accountable for the alcoholic beverages found in his stock. Cf. Re Kurian, Bulletin 517, Item 2.

There is no prior adjudicated record against the defendant. In view of that fact and that no aggravating circumstances appear herein, I shall suspend his license for the minimum period of ten days. Re Klimovich, Bulletin 667, Item 1.

Accordingly, it is, on this 3rd day of August, 1945,

ORDERED, that Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Raritan to Alexander Narze, t/a Al's Bar & Grill, for premises on S/W Corner New Jersey State Highway #36 and Palmer Avenue, Raritan Township, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. August 13, 1945, and terminating at 2:00 a.m. August 23, 1945.

ALFRED E. DRISCOLL  
Commissioner.

14. APPELLATE DECISIONS - FENMANSON REALTY CORPORATION v. ASBURY PARK - DISCONTINUED.

FENMANSON REALTY CORPORATION, )  
Appellant, )  
-vs- ) ON APPEAL  
CITY COUNCIL OF THE CITY OF ) ORDER OF DISCONTINUANCE  
ASBURY PARK, )  
Respondent. )  
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J. Stanley Herbert, Esq., Attorney for Appellant.  
Charles Frankel, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from respondent's denial of appellant's application for a plenary retail consumption license for the present fiscal year for premises 212-214 Third Avenue, Asbury Park, N. J.

The appellant has requested leave to withdraw the appeal and the respondent has signified its consent thereto. Since no reason appears to the contrary,

It is, on this 3rd day of August, 1945,

ORDERED, that the within appeal be and the same is hereby discontinued.

*Alfred E. Diszell*  
Commissioner.