

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

BULLETIN 577

JULY 23, 1943.

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

BULLETIN 577

JULY 23, 1943.

- 1. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - FAILURE TO DISCLOSE PREVIOUS SUSPENSION - 20 DAYS' SUSPENSION, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

ELIZABETH RUSSO )  
T/a GINGHAM CLUB )  
4415 Park Boulevard )  
Wildwood, N. J., )

Holder of Plenary Retail Consumption License C-45 for the fiscal year 1942-43, and transferred during pendency of these proceedings in said year to )

CONCLUSIONS AND ORDER

JOSEPH RUSSO AND ELIZABETH RUSSO )  
T/a GINGHAM CLUB, )  
for the same premises, )

and renewed by the said Joseph Russo and Elizabeth Russo, now holding Plenary Retail Consumption License C-42 for the fiscal year 1943-44, issued by the Board of Commissioners of the City of Wildwood. )  
----- )

A. J. Cafiero, Esq., Attorney for Defendant-Licensee.  
Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleaded non vult to charges that: (1) she falsified her application for her 1942-43 license in stating no person, other than herself, had any interest in the license, in violation of R. S. 33:1-25; (2) that she aided and abetted Joseph Russo to exercise the rights of her license, in violation of R. S. 33:1-52; and (3) in answer to Question 41, she failed to disclose a suspension of her license.

The plea of non vult is accepted by me as fully equivalent to a plea of guilty. Re Fennia Grill, Inc., Bulletin 568, Item 7.

It appears that the licensed business is and was a joint venture of Joseph Russo and Elizabeth Russo, husband and wife. Both seem to be, as far as the record before me shows, fully qualified to hold the license. This is not one of the corrupt type of "front" violations, but seems to have been created merely for the convenience of the husband and wife in operating this partnership venture.

It further appears that the license was, prior to the plea, properly transferred to Joseph Russo and Elizabeth Russo, jointly, and that the renewal license now in effect for the period 1943-44 was issued to them jointly, thus correcting the illegal situation and reflecting the true ownership of the licensed business.

However, violations of this kind are against the law. As a penalty on the first and second charges, I shall suspend the license for a period of ten days.

As to the third charge, Elizabeth Russo falsified her same application in neglecting to insert therein that her license for the 1939-40 period had been suspended for one day. The purpose of the application is to secure a full and truthful disclosure for the licensing authority, under oath of the applicant, of all the facts. All questions in the application are material and any false answer thereto must be punished. See R. S. 33:1-25.

On this charge, I shall suspend the license for a period of ten days. Because of the plea of non vult, I shall remit five days from the total penalty, leaving a net suspension of fifteen days.

Although this proceeding was instituted prior to the transfer of the license and during the licensing period ending June 30, 1943, it does not abate, but remains fully effective against the transferee's license for the current (1943-44) period. State Regulations No. 15.

Accordingly, it is, on this 13th day of July, 1943,

ORDERED, that Plenary Retail Consumption License C-42, heretofore issued by the Board of Commissioners of the City of Wildwood to Joseph Russo and Elizabeth Russo, t/a Gingham Club, for premises 4415 Park Boulevard, Wildwood, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 A.M. July 15, 1943, and terminating at 3:00 A.M. July 30, 1943.

ALFRED E. DRISCOLL  
Commissioner.

2. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - FAILURE TO DISCLOSE PREVIOUS SUSPENSION - 10 DAYS' SUSPENSION, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

JOSEPH RUSSO )  
T/a FISHERMEN'S INN )  
528 West Montgomery Avenue )  
Wildwood, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-46 for the fiscal year 1942-43 and now holder of Plenary Retail Consumption License C-40 for the current (1943-44) year, issued by the Board of Commissioners of the City of Wildwood. )  
- - - - - )

A. J. Cafiero, Esq., Attorney for Defendant-Licensee.  
Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleaded non vult to charges that (1) he falsified his application for his 1942-43 license in concealing his interest in the license of Elizabeth Russo, in violation of

R. S. 33:1-25; and (2) in suppressing the fact that his Plenary Retail Consumption License C-46, for the period 1942-43, was suspended for three days and that the Plenary Retail Consumption License of Elizabeth Russo had been suspended for one day, in violation of R. S. 33:1-25.

The plea of non vult is accepted by me as fully equivalent to a plea of guilty. Re Fennia Grill, Inc., Bulletin 568, Item 7.

It appears that the charges herein, except that as to the suppression of the suspension of Plenary Retail Consumption License C-46, are connected with the charges against the Gingham Club, jointly owned by Elizabeth and Joseph Russo. See Re Russo, Bulletin 577, Item 1.

If there had been no other falsification of the license application, I would be inclined to dismiss the charges herein because Joseph Russo is being punished by the suspension of the license for the Gingham Club now held by Elizabeth and Joseph Russo, jointly. However, in view of the falsification in reference to his own individual license, I shall suspend the license for a period of ten days, with a remission of five days for the plea of non vult.

Although this proceeding was instituted during the licensing period ending June 30, 1943, it does not abate but remains fully effective against the defendant's renewal license for the current (1943-44) period. State Regulations No. 15.

Accordingly, it is, on this 13th day of July, 1943,

ORDERED, that Plenary Retail Consumption License C-40, heretofore issued by the Board of Commissioners of the City of Wildwood to Joseph Russo, t/a Fishermen's Inn, for premises 528 West Montgomery Avenue, Wildwood, be and the same is hereby suspended for five (5) days, commencing at 3:00 A.M. July 15, 1943, and terminating at 3:00 A. M. July 20, 1943.

ALFRED E. DRISCOLL  
Commissioner.

3. APPELLATE DECISIONS - GIRALDI v. BORDENTOWN.

GERVASIO GIRALDI, )  
Appellant, )  
-vs- )  
COMMISSIONERS OF THE CITY )  
OF BORDENTOWN, )  
Respondent )  
----- )

ON APPEAL  
CONCLUSIONS AND ORDER

Felcone & Felcone, Esqs., Attorney for Appellant.  
Jay B. Tomlinson, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the action of respondent denying appellant's application for a renewal of his plenary retail consumption license for the year 1942-43, for premises located on Crosswick Street, City of Bordentown. Respondent denied the renewal for the following alleged reasons: (1) taxpayers and residents had complained of the disturbing noises and profane language emanating from

the licensed premises; (2) on frequent occasions men in various stages and degrees of intoxication came out of the premises and congregated on the sidewalk; (3) patrons of the saloon committed nuisances in the alleyway and on the highway adjacent to the premises; (4) the operation of the licensed premises constituted a nuisance as well as a menace to persons using the sidewalk in front of same.

Although the appellant asserts in his petition of appeal that his application for renewal was denied without any reason being given, respondent's minutes of the meeting at which the action was taken set forth substantially the same reason for respondent's action as that subsequently stated in its answer to the petition of appeal.

In common fairness to applicants, municipal issuing authorities, when denying applications for licenses or the renewal thereof, should, at that time, state their reasons for the denial of the application. Re Leo's 29 Club, Inc. v. Mountainside, Bulletin 475, Item 10.

The premises in question have been licensed by the respondent since the latter part of 1933. Appellant has held a license for these premises since March of 1938. During this period, from 1938 to 1942, there was no record of any disciplinary proceedings having been instituted against the appellant by the municipal issuing authority.

Respondent's witnesses testified that conditions in and around appellant's premises were getting progressively worse. These witnesses stated that on many occasions they had observed persons under the influence of liquor "staggering and drunk" come out of the premises. These witnesses likewise testified that they objected to the language used by patrons of the saloon, whom they stated congregated in front of same before and after the closing hour. One of these witnesses, a Councilman, testified that many of the school children of Bordentown were forced to pass the premises on their way to and from school. The Councilman stated that he had observed men standing in front of the saloon who were "absolutely under the influence of liquor." On a number of occasions, neighbors called the police for the purpose of securing relief from the allegedly incessant noise and profane language coming from the tavern and the immediate adjacent area.

Appellant's witnesses, on the other hand, with certain notable exceptions, testified that the premises were conducted in an orderly manner, that they never observed the sale of alcoholic beverages to persons actually or apparently intoxicated, and that the peace and quiet of the neighborhood was not disturbed by the operation of the saloon or the conduct of those who frequented the same. Several of appellant's witnesses, however, did concede that crowds occasionally did gather in front of appellant's place and that they occasionally noticed that persons in these crowds were apparently intoxicated. These witnesses had observed "drunken people" come out of the saloon but were unable to state "whether they got drunk in there or not."

I am satisfied from the testimony that on a goodly number of occasions persons patronizing the saloon had become intoxicated and made a nuisance of themselves. Appellant's saloon, unfortunately, appears to have been a gathering point for these persons.

Whether a renewal should be granted or not is, like the original issuance of the license, a matter to be decided in the light of

what is then determined to be in the best interests of the public at large. Malone v. Bordentown, Bulletin 129, Item 9. R. S. 33:1-24 requires municipal issuing authorities "to investigate applicants and to inspect premises sought to be licensed, to conduct public hearings on applications and revocations;\*\*\*." A decision by a municipal issuing authority is entitled to great weight; it should not be reversed in the absence of clear proof of error or improper motive. The determination of the respondent in the instant case is founded upon substantial evidence, appears to have been in the best interests of the public at large, and will, therefore, be sustained.

Accordingly, it is, on this 12th day of July, 1943,

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

ALFRED E. DRISCOLL  
Commissioner.

4. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN APPLICATION FOR CLUB LICENSE CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - LICENSE REVOKED.

In the Matter of Disciplinary )  
Proceedings against )

WOODLAND ROD & GUN CLUB )  
215 North Belmont Avenue )  
Belleville, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Club License CB-1, )  
issued by the Board of Commis- )  
sioners of the Town of )  
Belleville. )

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

BY THE COMMISSIONER:

The defendant pleaded non vult to charges alleging that (1) it falsely concealed in its license application that Lawrence Burde is the real and beneficial owner of the license and business conducted thereunder, and (2) it permitted the said Lawrence Burde to exercise the privileges of its successive club licenses ever since May 15, 1940.

The licensed premises are located in the basement of a one-story dwelling, occupied and owned by Lawrence Burde, the treasurer of the club. A written statement obtained from Burde contains the following:

"Q Who is the true owner of the license issued to the Woodland Rod & Gun Club, 215 N. Belmont Ave., Belleville, N. J., you or the Woodland Rod & Gun Club?

"A I am. I paid for the license with my own money, I buy all the alcoholic beverages, I sell all the alcoholic beverages and I keep, as my own, all the receipts received from the sale of alcoholic beverages.

"Q Then isn't it a fact that the Woodland Rod & Gun Club is in reality, a 'front' for you?

"A Yes - I am the sole owner of the Woodland Rod & Gun Club's license."

From the president of the club it was learned that "Burde owned the property and we had a meeting place for the club members, so we gave him the privilege of getting a license & operating the bar. Burde bought, sold, paid for with his own money all the alcoholic beverages for bar and kept all the receipts."

Despite the contention of defendant's attorney, this is not a case where lax bookkeeping methods belied the true ownership of the license. Cf. Meadowbrook Social Club, Bulletin 549, Item 4. Nor is the defendant in a position to claim that its license was not being operated by Burde as a commercial enterprise. Cf. Club Araby, Bulletin 458, Item 9. Rather, this case falls within the principle of those where I have revoked club licenses because of the fraud perpetrated upon the local issuing authority and this Department. See, for example, Re Willow Brook Club, Bulletin 518, Item 12, where I said:

"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 individuals to operate a licensed business for private gain, in competition with other retail licensees who pay a much higher fee."

Although this proceeding was instituted during the last fiscal year, which expired June 30, 1943, it does not abate but remains fully effective against the defendant's renewal license for the current (1943-44) year. State Regulations No. 15.

Accordingly, it is, on this 13th day of July, 1943,

ORDERED, that Club License CB-1, issued by the Board of Commissioners of the Town of Belleville, for the fiscal year 1943-44, to Woodland Rod & Gun Club for premises 215 North Belmont Avenue, Belleville, be and the same is hereby ~~revoked~~, effective immediately.

ALFRED E. DRISCOLL  
Commissioner.

5. DISCIPLINARY PROCEEDINGS - VIOLATION OF R. S. 33:1-34 - FAILURE TO FILE NOTICE OF CHANGE IN FACTS SET FORTH IN APPLICATION - ILLEGAL SITUATION CORRECTED - 10 DAYS' SUSPENSION, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against  
 GORHAMS CAFE INC.  
 538 Kaighn Avenue  
 Camden, N. J.,  
 Holder of Plenary Retail Consumption License C-38 for the fiscal year 1942-43, and transferred during the pendency of these proceedings in said year to  
 JAMES H. GORHAM  
 T/a GORHAM'S CAFE  
 for the same premises,  
 and renewed by the said James H. Gorham, now holding Plenary Retail Consumption License C-188 for the fiscal year 1943-44, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

CONCLUSIONS AND ORDER

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 Harry M. Mendell, Esq., Attorney for Defendant-Licensee.  
 Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleaded non vult to charges that it failed to file a notice of change in its corporate shareholdings, in violation of R. S. 33:1-34.

The plea of non vult is accepted as fully equivalent to a plea of guilty. Re Fennia Grill, Inc., Bulletin 568, Item 7.

As a result of the investigation made herein the license was, on the date the charges were served on the defendant, transferred to James H. Gorham, individually, and the holding thereof now reflects the true ownership of the licensed business.

In view of the plea, the fact that there is no adjudicated record against the licensee and the prompt institution of corrective measures by the licensee, I shall suspend the license for ten days and remit five days thereof.

Although this proceeding was pending against the prior licensee, any transfer is subject to any penalty which may be imposed. The proceeding does not abate by reason of the expiration of the licensing year on June 30, 1943 but remains fully effective against the license for the current (1943-44) period. State Regulations No. 15.

Accordingly, it is, on this 14th day of July, 1943,

ORDERED, that Plenary Retail Consumption License C-188, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to James H. Gorham, t/a Gorham's Cafe, for premises 538 Kaighn Avenue, Camden, be and the same is hereby suspended for five (5) days, commencing at 2:00 A.M. July 19, 1943, and terminating at 2:00 A.M. July 24, 1943.

ALFRED E. DRISCOLL  
Commissioner

6. MORAL TURPITUDE - CRIME OF POSSESSING STOLEN GOODS USUALLY INVOLVES MORAL TURPITUDE - FACTS EXAMINED - CRIME IN INSTANT CASE FOUND NOT TO INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - APPLICANT FOUND NOT MANDATORILY DISQUALIFIED.

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

CONCLUSIONS  
AND ORDER

Case No. 194.  
----- )

BY THE COMMISSIONER:

Petitioner has been a retail licensee of this State since 1934 and at present is the owner of five taverns. His eligibility to hold a liquor license is now in question because of a crime of which he was convicted twenty-four years ago.

Petitioner's fingerprint record does not disclose any conviction of crime, but during the course of an investigation by this Department he volunteered the information through which the record of his conviction was obtained. From such record it appears that petitioner pleaded guilty in 1919, in a Federal court, of possessing goods stolen from interstate shipment and was sentenced to serve five years in a United States penitentiary. He was released after serving ten months.

In explanation of his conviction, petitioner testifies that in the Winter of 1916 (when he was twenty-one) he was taking care of his father's dairy farm; that one night, about midnight, he was awakened by a cousin who informed him that he had a truck outside and could proceed no further because of a snowstorm; that the cousin asked whether he could leave the truck on the farm and petitioner consented; that the next day the cousin returned with two other men, had some conversation with them which the petitioner could not overhear, and that a day or so thereafter the truck was removed. Petitioner says he heard nothing further until January 1919, when his father was arrested and petitioner learned that the United States Marshal had a warrant for his arrest; that thereafter petitioner presented himself at the Marshal's office and then learned for the first time that the truck had actually contained stolen goods.

Later he pleaded guilty to the charge of possessing stolen goods, taking the blame partly to shield his father, who he asserts was unjustly accused, and partly to shield his cousin; that during his imprisonment he was urged by the Federal authorities to disclose the guilty party on promise of immediate release; that finally, after his cousin and others had been apprehended and convicted, through other sources, he was released.

The crime of possessing stolen goods, by its nature, ordinarily involves the element of moral turpitude. See Re Case No. 424, Bulletin 506, Item 3. However, the background in each case may be considered in determining whether that element is present.

In the present case there is nothing to indicate that petitioner participated in any way in the theft of the silk or actually aided in the criminal enterprise or derived any benefit from it. If his story is true (the Federal records do not disclose any details of the case), he was only incidentally involved because he permitted the truck to be parked on the farm.

I cannot redetermine in these proceedings whether petitioner was actually innocent of the crime, because he may not here collaterally attack his own confessional plea or the merits of his conviction in the criminal court. See Re Case No. 172, Bulletin 484, Item 9, and cases therein cited. However, to take cognizance of the relatively minor part that petitioner played in the offense is not to absolve him of his conviction.

I am not overly impressed with petitioner's misguided refusal to reveal his cousin's identity to the criminal authorities. On the other hand, I am influenced by his youth at the time of the incident; further, by the fact that he made a full and frank disclosure of his conviction when questioned by the ABC agents, that his record is clear for the last twenty years, and that he bears a splendid reputation in his community. I shall therefore give him the benefit of the doubt and, in the absence of any evidence to the contrary, accept his version of what led to his conviction.

On the basis of petitioner's story, I conclude that the element of moral turpitude was not present in the crime of which he was convicted.

Petitioner is therefore not mandatorily disqualified from holding a liquor license.

In view of the result reached herein, no order removing disqualification is necessary. See Re Case No. 143, Bulletin 500, Item 6.

ALFRED E. DRISCOLL  
Commissioner.

Dated: July 14, 1943.

7. DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - GOOD CONDUCT FOR FIVE YEARS LAST PAST AND NOT CONTRARY TO PUBLIC INTEREST - 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. )  
Case No. 271. )  
----- )

CONCLUSIONS  
AND ORDER

BY THE COMMISSIONER:

On September 25, 1939 petitioner's application to remove any disqualifications that may have existed was ordered dismissed by the late Commissioner. At that time petitioner was given leave to re-apply after five years shall have elapsed from the date of his last conviction in 1938. See Case No. 55, Bulletin 347, Item 5. The present petition has been filed pursuant to the order aforementioned.

In 1915 petitioner, then 21 years of age, was convicted of assault and battery and carnal abuse, and as a result thereof was placed on probation for a term of three years. In 1922 he was again convicted of carnal abuse and was sentenced to prison for six months. Investigation revealed that in 1930 he was convicted of disorderly conduct and fined \$5.00.

In 1938 a woman, now petitioner's wife, was convicted of false swearing in executing an application for a liquor license in this

State. R. S. 33:1-25. At the same time petitioner was convicted of aiding and abetting her (R. S. 33:1-52) in the crime and was sentenced to six months' imprisonment, sentence, however, being suspended and petitioner was released on three years' probation. See Re Mosque Grill, Inc., Bulletin 239, Item 3. After six months petitioner was taken off probation.

The earlier convictions of crimes, even though of a serious nature, happened such a long time ago that I am immediately disposed to grant the application to lift in so far as they are concerned. As to the conviction for aiding and abetting the false swearing of another to obtain a liquor license, this strikes at the very root of the alcoholic beverage control system. Since in Case No. 55, supra, leave to reapply in 1943 was given, careful examination of petitioner's conduct has been made.

The testimony of petitioner concerning his conduct since the former hearing indicates that he has lived a law-abiding life to the present day. Several witnesses, who appeared to be substantial business men, testified in his behalf. Their opinions were in unanimity that petitioner bears a good reputation in the community in which he resides.

In view of the fact that petitioner has apparently led an honest and law-abiding life during the past five years, I believe that his association with the alcoholic beverage industry will not be detrimental to the public interest. I will, therefore, exercise my discretion in the instant matter and lift any disqualifications that may exist.

Accordingly, it is, on this 14th day of July, 1943,

ORDERED, that petitioner's statutory disqualifications because of any convictions mentioned herein be lifted in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL  
Commissioner.

8. MILITARY FORCES - REGULATIONS NO. 37 - HOURS OF SALE TO MEMBERS OF ARMED FORCES IN THE CITY OF TRENTON, TOWNSHIPS OF EWING, HAMILTON AND LAWRENCE, IN MERCER COUNTY; RESTRICTED.

July 15, 1943

TO ALL LICENSEES IN THE CITY OF TRENTON AND THE TOWNSHIPS OF EWING, HAMILTON AND LAWRENCE IN MERCER COUNTY, NEW JERSEY:

The Military authorities, District No. 5, Second Service Command, with the concurrence of the Naval authorities for the same area, by duly operative order, have established the hour of 12:00 midnight as the time after which alcoholic beverages are not to be sold to any members of the armed forces in the City of Trenton and the Townships of Ewing, Hamilton and Lawrence in Mercer County.

The order prohibits the sale of alcoholic beverages to members of the armed forces between 12:00 midnight of every day and the municipal opening hour for the following morning.

Accordingly, from and after the date of this notice, all licensees in the City of Trenton and Townships of Ewing, Hamilton and Lawrence in Mercer County, are strictly bound by Rule 2 of Regulations No. 37, as follows:

"2. Whenever a properly authorized officer or agency of the armed forces of the United States has issued an operative order, effective in a designated area, forbidding sales of alcoholic beverages to any person wearing the uniform of the armed forces of the United States during certain hours specified in such order, no licensee within said area shall, during those hours, sell, serve or deliver, or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, directly or indirectly, to any person wearing the uniform of the armed forces of the United States or of an Allied Nation, or allow, permit or suffer any such person to consume any alcoholic beverage upon the licensed premises."

I emphatically call to your attention that, by virtue of this Rule, you may not, after the midnight curfew hour, sell or serve any alcoholic beverages to any person wearing the uniform of the armed forces of either the United States or an Allied Nation -- whether Soldiers, Sailors, Marines, Coast Guardsmen, or members of the Women's Auxiliary of said branches of service -- nor may you allow any such person to consume alcoholic beverages on your premises after that curfew hour.

Violation will be cause for suspension or revocation of your license. Aside from your responsibility to this Department by virtue of Regulations No. 37, it is expected that all licensees will cooperate to the fullest with our military and naval authorities.

ALFRED E. DRISCOLL  
Commissioner.

Dated: July 15, 1943.

9. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE, IN VIOLATION OF R. S. 33:1-52 - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against )  
 DOMINICK FIORELLO )  
 181 - 8th Avenue )  
 Newark, N. J., )  
 Holder of Plenary Retail Consumption License C-286 for fiscal year 1942-43 issued by Municipal Board of Alcoholic Beverage Control of the City of Newark, and transferred during said year to )  
 NICOLA P. MARIA )  
 for premises at 107 - 7th Avenue, Newark, and renewed as License C-391 for the present fiscal year by )  
 NICOLA P. MARIA )  
 107 - 7th Avenue )  
 Newark, N. J. )

CONCLUSIONS  
AND ORDER

Gerardo L. DelTufo, Esq., Attorney for Defendants.  
 Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.  
 BY THE COMMISSIONER:

Defendant-licensee pleaded guilty to charges which allege, in substance, that, in his application filed for the fiscal year 1942-43,

he falsely stated that no individual other than the applicant had any interest in the license applied for, whereas in fact Anthony C. Pecora had such an interest, said false statement being in violation of R. S. 33:1-25; and also that, from July 1, 1941 to June 14, 1943, he knowingly aided and abetted Anthony C. Pecora to exercise the privilege of his license, in violation of R. S. 33:1-52.

Dominick Fiorello held a license for premises known as 181 - 8th Avenue, Newark, from 1936 to July 1, 1941. On or about the latter date he turned the business over to his stepson, Anthony C. Pecora, but no application was made to transfer the license to the new owner. The license for the fiscal year 1942-43 was applied for and obtained by Dominick Fiorello, although it is admitted that at that time the business was owned by Anthony C. Pecora. It appears that the unlawful situation was permitted to continue in order to save a transfer fee.

On June 24, 1943 the license in question was transferred to Nicola P. Maria and to premises at 107 - 7th Avenue, Newark, subject to the outcome of these proceedings. Maria has renewed the license for the current fiscal year.

As to penalty: Although this "front" case involves a family relationship, it is distinguished from prior cases such as Re Sowa, Bulletin 437, Item 9, because of the intent of the parties to defraud the issuing authority of a transfer fee. Moreover, the "front" was continued after July 1, 1942 despite the warning as to increased penalties in such cases. Bulletin 512, Item 9. Under the circumstances, I shall suspend the license for ten days. The penalty shall apply to the license issued for the current fiscal year. Regulations No. 15, Rule 3.

Accordingly, it is, on this 15th day of July, 1943,

ORDERED, that Plenary Retail Consumption License No. C-391 for the current fiscal year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Nicola P. Maria for premises at 107 - 7th Avenue, Newark, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A.M. July 19, 1943, and terminating at 2:00 A.M. July 29, 1943.

ALFRED E. DRISCOLL  
Commissioner.

10. APPELLATE DECISIONS - PRINZ v. DELAWARE TOWNSHIP.

MARTHA PRINZ, )

Appellant, )

-vs- )

ON APPEAL  
CONCLUSIONS AND ORDER

TOWNSHIP COMMITTEE OF THE )  
TOWNSHIP OF DELAWARE, CAMDEN )  
COUNTY, )

Respondent )  
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Frank M. Lario, Esq., Attorney for Appellant.  
No appearance on behalf of respondent.

BY THE COMMISSIONER:

This is an appeal from the action of respondent suspending appellant's License C-3 and any renewal thereof for premises at Chapel and Franklin Avenues, Delaware Township, for a period of fifty days.

Appellant, in disciplinary proceedings before the respondent municipal issuing authority, entered a plea of non vult to the following charges: (1) allowing, permitting and suffering lewdness and immoral activities in and upon the licensed premises, in violation of Rule 5 of Regulations No. 20; and (2) allowing, permitting and suffering female employees on the licensed premises to accept beverages at the expense of and as the guests of patrons, in violation of Rule 22 of Regulations No. 20. Because of the plea below and the character of the charges, the appeal was not permitted to act as a stay of the suspension imposed by the respondent.

The plea of non vult to these charges was equivalent to a plea of guilty. Under the circumstances, the only issue which may properly be considered on this appeal is whether the punishment ordered by the municipal issuing authority was so excessive, arbitrary or unfair as to require modification.

Appellant's confessed violations of the regulations were of a serious character and called for the revocation of the license or, in the alternative, a substantial suspension.

The extent of the penalty to be inflicted for any violation rests primarily in the reasonable discretion of the issuing authority. In this type of appeal, the question to be decided is whether or not the municipal issuing authority, in fixing the penalty, acted unreasonably or otherwise abused the discretionary power vested in it by the Alcoholic Beverage Law. Considerable latitude in fixing penalties must necessarily be given to municipal issuing authorities. Hence, in the absence of proof that the municipal issuing authority acted unreasonably, the Commissioner will not reverse or modify the penalty merely because he would have imposed a different penalty had the case come before him in the first instance.

In the instant case it cannot be said that the respondent acted unreasonably or in anywise abused its discretionary power to fix penalties, or that the penalty was unreasonable or excessive. I am not impressed by the appellant's argument that the penalty should be modified because other licensees, having either a previous record

or having committed allegedly more serious violations and whose cases were heard at the same time, received substantially the same penalty. Each case must stand upon its own record. The decision of respondent in other cases may not be collaterally attacked in these proceedings.

The action of respondent is affirmed.

Accordingly, it is, on this 16th day of July, 1943,

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

ALFRED E. DRISCOLL  
Commissioner.

11. APPELLATE DECISIONS - MANFREDI v. DELAWARE TOWNSHIP.

FRANK MANFREDI and ANTHONY )  
MANFREDI, )

Appellants, )

-vs-

ON APPEAL  
CONCLUSIONS AND ORDER

TOWNSHIP COMMITTEE OF THE )  
TOWNSHIP OF DELAWARE, CAMDEN )  
COUNTY, )

Respondent )

----- )

Frank M. Lario, Esq., Attorney for Appellant.  
No appearance on behalf of respondent.

BY THE COMMISSIONER:

This is an appeal from the action of respondent suspending appellants' License C-28 and any renewal thereof for premises at Highland and Orchard Avenues, Delaware Township, for a period of fifty-five days.

Appellants, in disciplinary proceedings before the respondent municipal issuing authority, entered a plea of non vult to the following charges: (1) allowing, permitting and suffering lewdness and immoral activities in and upon the licensed premises, in violation of Rule 5 of Regulations No. 20; (2) knowingly employing persons who would fail to qualify as licensees by reason of non-residence, in violation of R. S. 33:1-26 and Rule 1 of Regulations No. 11; and (3) selling, serving and delivering or allowing, permitting and suffering the service and delivery of alcoholic beverages to persons under the age of twenty-one, and allowing, permitting and suffering the consumption of such beverages upon the licensed premises, in violation of Rule 1 of Regulations No. 20 and of a local ordinance. A further charge of selling alcoholic beverages to minors in violation of R. S. 33:1-77, to which the appellants had entered a plea of not guilty, was dismissed by the respondent after the appellants had apparently changed their plea of violating Rule 1 of Regulations No. 20 and a local ordinance to guilty.

The plea of non vult to the charges was equivalent to a plea of guilty. Hence it makes little difference whether, in these proceedings, the plea to the charge of selling to minors was not guilty or non vult.

Because of the plea below and the character of the charges, the appeal was not permitted to act as a stay of the suspension imposed by the respondent.

The only issue which may properly be considered on this appeal is whether the punishment ordered by the municipal issuing authority was so excessive, arbitrary or unfair as to require modification.

Appellants' confessed violations of the regulations were of a serious character and called for the revocation of the license or, in the alternative, a substantial suspension.

The extent of the penalty to be inflicted for any violation rests primarily in the reasonable discretion of the issuing authority. In this type of appeal the question to be decided is whether or not the municipal issuing authority, in fixing the penalty, acted unreasonably or otherwise abused the discretionary power vested in it by the Alcoholic Beverage Law. Considerable latitude in fixing penalties must necessarily be given to municipal issuing authorities. Hence, in the absence of proof that the municipal issuing authority acted unreasonably, the Commissioner will not reverse or modify the penalty merely because he would have imposed a different penalty had the case come before him in the first instance.

In the instant case it cannot be said that the respondent acted unreasonably or in anywise abused its discretionary power to fix penalties, or that the penalty was unreasonable or excessive. I am not impressed by the appellants' argument that the penalty should be modified because other licensees, having either a previous record or having committed allegedly more serious violations and whose cases were heard at the same time, received substantially the same penalty. Each case must stand upon its own record. The decision of respondent in other cases may not be collaterally attacked in these proceedings.

The action of respondent is affirmed.

Accordingly, it is, on this 16th day of July, 1943,

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

ALFRED E. DRISCOLL  
Commissioner,

## 12. ELIGIBILITY - FACTS EXAMINED - APPLICANT HELD NOT ELIGIBLE FOR EMPLOYMENT BY LIQUOR LICENSEE.

July 20, 1943

Re: Eligibility Case No. 472

Applicant, a non-citizen, has applied for an employment permit.

Applicant's police record and fingerprint returns disclose that in July 1933 he was fined \$10.00 on a guilty plea to a charge of maintaining a public nuisance by operating a "speakeasy." Three weeks later he was sentenced to thirty days in a county penitentiary after pleading guilty to a charge of selling liquor in violation of a municipal resolution. In 1935 he pleaded guilty to a charge of transporting alcoholic beverages in violation of the Alcoholic Beverage Control Act and was sentenced to sixty days in a county penitentiary. In 1940 he pleaded guilty to a lottery charge and was sentenced to six months in a county penitentiary. It appears that he was selling tickets and participation rights in a lottery known as the "numbers game", and had been so engaged for more than three years prior to such conviction.

Applicant in 1942 filed with this Department an application for an employment permit in which he denied under oath that he had ever been convicted of any crime or had ever been convicted of or committed any violation of the Alcoholic Beverage Law. He failed to appear at a departmental hearing to determine his eligibility and the Commissioner decided that, in view of the nature of his criminal convictions as disclosed by his fingerprint records, he was ineligible to be employed by or connected in any business capacity with any liquor licensee. In the instant application he merely states that he was convicted about ten years ago of selling alcoholic beverages.

Applicant admits that he knowingly concealed his criminal convictions in his 1942 application in order to secure a permit. He explains that his failure to appear at the former hearing was caused by his being ordered to report for induction into the armed forces at the time such hearing was scheduled. It appears that he was subsequently rejected on account of a physical disability.

Without determining whether applicant's criminal convictions involved moral turpitude, an alien permit, issuance of which is a discretionary function, should be withheld from one who has committed such offenses coupled with wilful and deliberate falsification under oath and has thus stamped himself as unfit to be employed by a liquor licensee in this State. Re Case No. 332, Bulletin 418, Item 2.

It is recommended that application for permit be denied.

Gaylord R. Hawkins  
Attorney.

APPROVED:

*Alfred E. Griswold*  
Commissioner.