

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

BULLETIN 603

JANUARY 27, 1944.

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THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY
5800 S. DICKINSON DRIVE
CHICAGO, ILLINOIS 60637

RECEIVED
JAN 15 1964

TO: DR. J. H. GOLDSTEIN
FROM: DR. R. M. WAYMIRE
SUBJECT: POLYMERIZATION OF
METHACRYLAMIDE

Enclosed for you are two copies of a report on the
polymerization of methacrylamide in the presence of
various metal ions.

The report is a preliminary report and is
not intended for publication.

Very truly yours,
R. M. Waymire

cc: Dr. J. H. Goldstein
Dr. R. M. Waymire

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cc: Dr. J. H. Goldstein
Dr. R. M. Waymire

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

BULLETIN 603

JANUARY 27, 1944.

1. ELIGIBILITY - FACTS EXAMINED - REPEATED VIOLATIONS OF THE ALCOHOLIC BEVERAGE CONTROL LAW - THIRD CONVICTION FOUND TO INVOLVE THE ELEMENT OF MORAL TURPITUDE - APPLICANT ADVISED THAT HE IS DISQUALIFIED TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE IN THIS STATE.

January 19, 1944.

Re: Case No. 516

Applicant's criminal record includes three separate convictions for possession of illicit alcoholic beverages in violation of the Alcoholic Beverage Law. In 1934 he was apprehended while operating a still for the illegal manufacture of liquor and was given a two-month suspended sentence and fined \$100.00. In 1938 he was arrested for selling untaxed liquor, as a result of which he was fined \$100.00 and placed upon probation for one year. In May 1942 he was fined \$200.00 after agents of the Department of Alcoholic Beverage Control had purchased illicit alcoholic beverages at his unlicensed restaurant on three separate occasions.

A single violation of the Alcoholic Beverage Law does not necessarily involve the element of moral turpitude. The reason is that such a lone infraction, being malum prohibitum rather than malum in se, does not generally include circumstances indicating such a shameful dereliction as would warrant a finding that such element is present. However, repeated offenses of the kind in question demonstrate an utter lack of regard for law and order. The repetition of such similar violations is indicative of "a bent of mind -- an obtuseness to the rules of organized society -- a continued refusal to abide thereby, which is a potent, if not so glaring, form of moral turpitude." Re Case No. 246, Bulletin 293, Item 10. Cf. Re Case No. 314, Bulletin 393, Item 9; Re Case No. 324, Bulletin 407, Item 4; Re Case No. 345, Bulletin 427, Item 4; Re Case No. 383, Bulletin 464, Item 10; Re Case No. 145, Bulletin 468, Item 2.

In view of applicant's multiple convictions as aforesaid, I believe that the crime which led to his third conviction involves the element of moral turpitude.

It is, therefore, recommended that applicant be advised that he is disqualified from holding a liquor license or being employed by a liquor licensee in this state.

Samuel B. Helfand,
Attorney.

APPROVED:

ALFRED E. DRISCOLL
Commissioner.

- 2. DISCIPLINARY PROCEEDINGS - FAILURE TO REPORT CHANGE IN STOCKHOLDERS, IN VIOLATION OF R. S. 33:1-34 - FAILURE TO DISCLOSE CRIMINAL RECORD OF STOCKHOLDER, IN VIOLATION OF R. S. 33:1-34 - EMPLOYING DISQUALIFIED PERSON CONVICTED OF A CRIME INVOLVING MORAL TURPITUDE, IN VIOLATION OF R. S. 33:1-26 AND RULE 1 OF STATE REGULATIONS NO. 11 - ILLEGAL SITUATION CORRECTED BY TRANSFER OF STOCK TO FULLY QUALIFIED PERSON - 30 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

IBERIA BEVERAGE CO., INC.)
 48 Madison Street)
 Newark, N. J.,)

CONCLUSIONS AND ORDER

Holder of State Beverage Distributor's License SBD-63, issued by the State Commissioner of Alcoholic Beverage Control.)
 -----)

Elias G. Willman, Esq., Attorney for Licensee.
 Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant was served with charges alleging, in substance, that:

- (1) and (3). It failed to file with the Commissioner of Alcoholic Beverage Control a written notice of changes in its stockholders of record, in violation of R. S. 33:1-34.
- (2) It failed to notify the Commissioner of Alcoholic Beverage Control that one of such stockholders had been convicted of certain crimes, in violation of R. S. 33:1-34.
- (4) It employed a person convicted of a crime involving moral turpitude, in violation of R. S. 33:1-26 and Rule 1 of State Regulations No. 11.

Although the defendant pleaded not guilty to all charges, there is no substantial dispute concerning the essential facts forming the basis of the charges.

On June 2, 1942 the defendant submitted its license application to the Department of Alcoholic Beverage Control, in which its stockholders were listed as Hope Matta, Joe Matta and Richard Suarez. On June 8, 1942 Julio Gonsalves purchased a half-interest in the corporate defendant, and on August 1, 1942 Bernard Martins purchased the remaining interest, thus constituting them equal one-half owners of the license and business conducted thereunder. Neither of these changes in ownership were disclosed to the Commissioner, as required by the Alcoholic Beverage Law. See R. S. 33:1-34.

As to Bernard Martins, no reason appears why there should have been any deliberate concealment of his interest. He is apparently fully qualified to hold stock, in any amount, in the corporate defendant. Julio Gonsalves, however, has a disqualifying criminal record which renders him ineligible as a licensee or for employment on licensed premises. See Re Case No. 516, Bulletin 603, Item 1, decided simultaneously herewith.

After these proceedings were instituted, Julio Gonsalves sold his stock in the corporation to a fully qualified person and has now severed all connection with the defendant. All of the defendant's stockholders are now apparently wholly eligible and the operation of the business appears to accord with the provisions of the Alcoholic Beverage Law.

I am convinced that this case does not present a situation whereby a "front" was created to circumvent any of the statutory requirements. The books of the corporation indicate that the acquisition of the shares of stock by both Gonsalves and Martins was duly recorded therein. If Gonsalves' shares had been placed in the name of a "front", an extremely heavy-fisted penalty would, in view of his criminal record, have been in order. Cf. Re Clinton Cut Rate Drugs, Inc., Bulletin 538, Item 3.

Moreover, the evidence fails to link any of the persons connected with the defendant, whether before or after Gonsalves became a half-owner, with knowledge of the fact that Gonsalves was not eligible to hold any of its corporate stock or to be employed by it.

A consideration of all of the circumstances attending the violations leads me to conclude that, upon a finding of guilt as to all charges, a penalty of thirty days is commensurate with the nature of the infractions committed by the defendant.

Accordingly, it is, on this 19th day of January, 1944,

ORDERED, that State Beverage Distributor's License SBD-63, issued by the State Commissioner of Alcoholic Beverage Control to Iberia Beverage Co., Inc., for premises 48 Madison Street, Newark, be and the same is hereby suspended for a period of thirty (30) days, commencing at 8:00 A.M. January 24, 1944 and terminating at 8:00 A.M. February 23, 1944.

ALFRED E. DRISCOLL
Commissioner.

3. LICENSEES - TIED HOUSES - HUSBAND AND WIFE - PERMISSIBLE UNDER THE LAW FOR ONE TO HAVE WHOLESALE AND THE OTHER RETAIL LICENSE IF THE TWO BUSINESSES ARE ENTIRELY SEPARATE AND DISTINCT - THE PRACTICE, HOWEVER, IS HEREIN DISAPPROVED.

January 19, 1944.

Albert N. Shahadi, Esq.
Atlantic City, N. J.

Dear Mr. Shahadi:

I have your letter of January 17th, reading in part:

"I have a client who is a wholesale beer distributor in Atlantic City. His wife who is not in any way connected with his wholesale distributing business is interested in purchasing a retail consumers' liquor license in the City of Somers Point. My client, the husband, is not in any way interested or connected nor will he be interested or connected in the said retail consumers' liquor license."

You ask whether or not there is any ruling against a wife's procuring such a "retail consumers' license."

Section 33:1-43 of the Revised Statutes reads, in part:

"It shall be unlawful for any owner, part owner, stockholder or officer or director of any corporation, or any other person whatsoever interested in any way whatsoever in any brewery, winery, distillery or rectifying and blending plant, or any wholesaler of alcoholic beverages, to conduct, own either in whole or in part, or be directly or indirectly interested in the retailing of any alcoholic beverages except as provided in this chapter, and such interest shall include any payments or delivery of money or property by way of loan or otherwise accompanied by an agreement to sell the product of said brewery, winery, distillery, rectifying and blending plant or wholesaler. Prior to June sixth, one thousand nine hundred and forty-one, the ownership of or mortgage upon or any other interest in licensed premises if such ownership, mortgage or interest existed on December sixth, one thousand nine hundred and thirty-three, shall not be deemed to be an interest in the retailing of alcoholic beverages. On and after June sixth, one thousand nine hundred and forty-one, the ownership of or mortgage upon or any other interest in licensed premises if such ownership, mortgage or interest existed on December sixth, one thousand nine hundred and thirty-three, shall not be deemed to be an interest in the retailing of alcoholic beverages; provided, none of the products of the brewery, winery, distillery, rectifying and blending plant, or wholesaler, is sold directly or indirectly at the licensed premises."

The pertinent question is whether or not your client's wife is disqualified, under the quoted section, from holding a retail license while he holds a state beverage distributor's license. A direct ruling on the question is contained in Re Rosenberg, Bulletin 125, Item 1.

I have serious doubts that a wife should be permitted to engage in the retail alcoholic beverage business while her husband holds a license to sell alcoholic beverages at wholesale. At the same time, I agree with the Rosenberg ruling that a wife is not, within the statute's contemplation, disqualified from holding a retail license solely because her husband holds a wholesale license. The statutory disqualification appears inapplicable if the two businesses are entirely separate and distinct. Note with special care the following language from the Rosenberg ruling:

"Mutual financial interest by way of joint ownership in the licensed premises or of mortgage thereon, chattel mortgage thereon or ownership of fixtures or other personal property, loans, the joint use of agents, servants or employees, the participation in both businesses of the two principals and other relationships of similar natures must conscientiously be avoided. The two businesses must be separate, segregated and independent at inception and ever continue so. Unlike their respective bosses, the enterprises must be strangers to each other. Tie-up between wholesaler and retailer is a most serious problem. The statute was expressly intended to prevent it. 'Tied houses', relatively unimportant when the sale of other commodities is involved, were responsible prior to Prohibition for many social and economic abuses."

You understand, of course, that the granting or denying of a particular retail license application is discretionary in the first instance with the municipal issuing authority, and comes formally before me only on appeal.

There is a further important matter. Your letter indicates that your client's wife wishes to purchase a "retail consumers' liquor license" in Somers Point. There is no such license. The five classes of municipally issued retail licenses are plenary retail consumption, seasonal retail consumption, plenary retail distribution, limited retail distribution and club licenses. (R. S. 33:1-12.)

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

4. DISCIPLINARY PROCEEDINGS - CHARGES OF FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACTS AND AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE NOLLE PROSESS.

DISCIPLINARY PROCEEDINGS - EXERCISING THE RIGHTS AND PRIVILEGES OF LICENSE PRIOR TO TRANSFER, IN VIOLATION OF R. S. 33:1-26 - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

EDWARD H. KRAUS)
T/a MT. VERNON CAFE)
1150 Mt. Vernon Street)
Camden, N. J.,)

Holder of Plenary Retail Consumption License C-183 issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden and transferred during the pendency of these proceedings to)

OSCAR R. LETTS)

for the same premises.)

CONCLUSIONS AND ORDERS

In the Matter of Disciplinary Proceedings against)

OSCAR R. LETTS)
1150 Mt. Vernon Street)
Camden, N. J.,)

Holder of Plenary Retail Consumption License C-183 issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)

Bruce A. Wallace, Esq., Attorney for Defendants.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On December 28, 1943 charges were preferred against Edward H. Kraus alleging as follows:

"1. In your application, filed with the Municipal Board of Alcoholic Beverage Control of the City of Camden, and upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question 30, which asks: 'Has any individual.....other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?', whereas in truth and fact Oscar R. Letts was so interested in that he was the real and beneficial owner of the licensed business; said false statement being in violation of R. S. 33:1-25.

"2. From December 15, 1933 and until the present time, you knowingly aided and abetted Oscar R. Letts to exercise, contrary to R. S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses, thereby yourself violating R. S. 33:1-52."

After the above charges were preferred it was reported that on December 16, 1943 the license had been transferred to Oscar R. Letts.

On January 6, 1944 a charge was preferred against Oscar R. Letts alleging as follows:

"From December 15, 1933, and until December 16, 1943, you exercised the rights and privileges of the successive plenary retail consumption licenses then being held by Edward H. Kraus, t/a Mt. Vernon Cafe, for premises 1150 Mt. Vernon Street, Camden, New Jersey, in violation of R. S. 33:1-26."

Since both charges involve the same licensed premises and arise out of the same set of circumstances, they may properly be disposed of by a single Conclusion and Order.

The defendants are related. Letts is the son-in-law of Kraus. Letts apparently decided to enter into the liquor business but, believing his employer would be opposed to his engagement in a licensed business, arranged to have Kraus, the father-in-law, take the license in his name. This was done. When questioned by the ABC agents on November 29, 1943, both readily admitted the facts and Letts stated that he had since learned that his employer had no objection to his conducting such a business and that it was his intention to make application for a transfer of the license to himself. Thereafter, on December 16, 1943, the license was transferred from Kraus to Letts. Under the circumstances, the charges against Edward H. Kraus will be nolle prossed.

As to the charges preferred against Letts, he has pleaded guilty and has presented the above facts in mitigation of any penalty that may be imposed against him. Apparently Letts was qualified to hold a license from the start. Although the situation has been corrected, nevertheless, in view of the violation and the false application filed with the issuing authority, a penalty must be imposed. Because of the correction, the frank disclosure of facts, and the absence of any previous record on the part of either Kraus or Letts, I shall suspend the license for a minimum period of ten days. Re Massar, Bulletin 569, Item 1.

Accordingly, it is, on this 19th day of January, 1944,

ORDERED, that the proceedings against Edward H. Kraus be and the same are hereby nolle prossed; and it is further

ORDERED, that Plenary Retail Consumption License C-183, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Oscar R. Letts for premises 1150 Mt. Vernon Street, Camden, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A.M. January 25, 1944 and terminating at 2:00 A.M. February 4, 1944.

ALFRED E. DRISCOLL
Commissioner.

5. CANCELLATION PROCEEDINGS - LICENSE ISSUED IN EXCESS OF QUOTA FIXED BY LOCAL ORDINANCE CANCELLED.

In the Matter of Cancellation)
Proceedings against)
WILLIAM F. HILL)
T/a GREEN GABLES)
Main Road, Route 202)
Montville Township)
P.O. Towaco, N. J.,)
Holder of Plenary Retail Consump-)
tion License C-15 issued by the)
Township Committee of the Town-)
ship of Montville.)
-----)

CONCLUSIONS
AND ORDER

William F. Hill, Pro Se.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Notice was served upon William F. Hill, t/a Green Gables, to show cause why License C-15, issued to him by the Township Committee of the Township of Montville, should not be cancelled and declared null and void on the ground that said license was issued in violation of Section 7 of an ordinance adopted June 2, 1938 and amended June 10, 1943 by the Township Committee of the Township of Montville. The ordinance in question, inter alia, provides as follows:

"The number of Plenary Retail Consumption licenses issued and outstanding in the Township of Montville in the County of Morris shall not exceed twelve provided, however, this provision shall not affect the renewal of licenses presently issued and outstanding, the transfer of said licenses or the renewal of same by transferees and provided further that this provision shall not affect the granting of Plenary Retail Consumption Licenses to the present holders of Club Licenses or the renewal and transfer of Plenary Retail Consumption Licenses so granted."

The records of the Department of Alcoholic Beverage Control disclose that a license was issued to William F. Hill, t/a Green Gables, on August 28, 1943, to become effective on September 1, 1943, for premises situate on Main Road, Route #202, Montville Township. At the time of the issuance of said license, fifteen plenary retail licenses had already been issued by the governing body and were outstanding in the municipality.

The premises for which the license had been issued was formerly used as a tavern by a tenant of William F. Hill. When the

tenant vacated the premises, however, he did not transfer the license to Mr. Hill. Therefore, since no transfer of the license was made, the present licensee would not come within the exception contained in the ordinance in question.

J. S. Holbrook, Clerk of Montville Township, advised the Department of Alcoholic Beverage Control that "this License was issued with the understanding that Mr. Hill would not open his place as a Tavern for the present but wanted to hold License for the duration of the War, so that the property could be sold with a Liquor License."

Regardless of the intent of William Hill, the issuance of the license in excess of the number permitted in Montville Township was obviously a violation of the ordinance. In view of the terms of the ordinance, the Township Committee had no jurisdiction to grant the application filed by William Hill (see Bachman v. Phillipsburg, 68 N. J. L. 552) and the license issued pursuant thereto was void (see Gundrum v. South Amboy, 86 N. J. L. 450).

Express authority to bring proceedings in the instant case and to find that the license considered herein is void, is conferred upon the Commissioner by R. S. 33:1-39, which provides, inter alia, that "The Commissioner may make such general rules and regulations and such special rulings and findings as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages and the enforcement of this chapter...." Cf. Re Loeb, Bulletin 206, Item 14.

Accordingly, it is, on this 19th day of January, 1944,

ORDERED, that the order to show cause why Plenary Retail Consumption License C-15 issued to William F. Hill, t/a Green Gables, by the Township Committee of the Township of Montville for premises on Main Road, Route 202, Montville Township, New Jersey, should not be cancelled and declared null and void, be and the same is hereby made absolute; and it is further

ORDERED, that operation, if any, under the aforementioned license must cease forthwith, and the license certificate itself must be surrendered to the Township Committee of the Township of Montville for cancellation.

ALFRED E. DRISCOLL
Commissioner

6. MORAL TURPITUDE - CRIME OF BREAKING, ENTERING AND LARCENY FOUND TO INVOLVE MORAL TURPITUDE.

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. 312.)
-----)

CONCLUSIONS
AND ORDER

BY THE COMMISSIONER:

In 1921 petitioner, who was then twenty-four years of age, was convicted of breaking, entering and larceny, and was sentenced to the Rahway Reformatory, remaining there for approximately five months. The specific offense was entering a house and taking away a victrola and various other personal articles. The crime in question involves moral turpitude. Re Case No. 488, Bulletin 561, Item 3, and cases cited therein.

Petitioner represents that he has been law-abiding for at least the past five years and seeks removal of his disqualification from working for a liquor licensee or holding a liquor license in this State by reason of his conviction of a crime involving moral turpitude, pursuant to R. S. 33:1-31.2.

Since his release he has continued to live in the same community wherein he resided at the time of his conviction, and has performed various kinds of work - chiefly as caretaker of a golf course and as a carpenter. He is married and lives with his wife and family, and has no record of any other convictions. He states, as one reason for desiring employment of a different nature, that he has injured his leg and is unable to do any climbing, thus affecting his ability to do carpenter work.

It appears that in October 1943 an ABC agent saw petitioner acting as a bartender for a retail licensee. Petitioner readily admitted his prior record, terminated his employment on the licensed premises and filed the petition in this proceeding. I am satisfied from the record that the petitioner was not familiar with the provisions of the Alcoholic Beverage Law and that no wilful violation took place.

Three witnesses appeared in his behalf, including one municipal officer from the municipality in which the petitioner resides. They all testified favorably as to his good conduct and general reputation in the community since his release. A communication, addressed to the Mayor of the municipality where he resides, elicited the information that there are no complaints or investigations pending against the applicant. Considering all the facts and the evidence, I am satisfied that the petitioner has conducted himself in a law-abiding manner for the past twenty-two years and that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 21st day of January, 1944,

ORDERED, that petitioner's statutory disqualification because of the conviction described herein be and the same is hereby lifted, in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL
Commissioner.

7. DISCIPLINARY PROCEEDINGS - PERMITTING GAMBLING ON LICENSED PREMISES, IN VIOLATION OF RULE 7 OF STATE REGULATIONS NO. 20 - 5 DAYS' SUSPENSION, LESS 2 FOR PLEA.

In the Matter of Disciplinary Proceedings against CHARLES G. SMITH T/a UNION SQUARE HOTEL 17/19 Union Square Phillipsburg, N. J., Holder of Plenary Retail Consumption License C-41 issued by the State Commissioner of Alcoholic Beverage Control.

CONCLUSIONS AND ORDER

Charles G. Smith, Pro Se. Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to the charge that he allowed, permitted and suffered gambling on his licensed premises in violation of Rule 7 of State Regulations No. 20.

An examination of the file discloses that, on December 11, 1943, investigators of the Department of Alcoholic Beverage Control observed several patrons seated at the end of the bar engaged in a card game, commonly known as "rummy." At the completion of a game, a small amount of money was passed to the winner thereof.

There is no evidence that the licensee engaged in or received any emolument from the game or games. Nevertheless, gambling of any kind on the licensed premises is prohibited by law. The minimum penalty for the violation of the type indicated in the instant case is five days. Cf. Thirteenth Ward Republican Club, Inc., Bulletin 512, Item 8.

By reason of the plea entered herein, two days of the penalty will be remitted, leaving a net suspension of the license for a period of three days.

Accordingly, it is, on this 24th day of January, 1944,

ORDERED, that Plenary Retail Consumption License C-41, issued by the State Commissioner of Alcoholic Beverage Control to Charles G. Smith, t/a Union Square Hotel, for premises 17/19 Union Square, Phillipsburg, N. J., be and the same is hereby suspended for a period of three (3) days, commencing January 31, 1944 at 1:00 A.M. and terminating February 3, 1944 at 1:00 A. M.

ALFRED E. DRISCOLL Commissioner.

8. APPELLATE DECISIONS - ALBINI v. WILDWOOD.

CHARLES ALBINI,)
 Appellant,)
 -vs-)
 BOARD OF COMMISSIONERS OF THE)
 CITY OF WILDWOOD,)
 Respondent.)
 -----)

CONCLUSIONS
AND ORDER

T. Millet Hand, Esq., Attorney for Appellant.
Irving Shenberg, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from respondent's denial of appellant's application for a renewal of his plenary retail consumption license for premises 4100 Atlantic Avenue, and also its denial of appellant's simultaneous application for transfer thereof to premises at the southwest corner of Schellenger and Arctic Avenues, both premises being located in the City of Wildwood.

Appellant held a plenary retail consumption license for premises 4100 Atlantic Avenue for the fiscal year 1942-43. Appellant's landlord refused to renew the lease for these premises, which expired on April 15, 1943. Thereafter, on May 21, 1943, the landlord was granted a transfer of a consumption license to the premises in question. On July 21, 1943 appellant filed his applications for renewal of his former license and for transfer of the license as renewed.

Respondent's denial of appellant's application for renewal, upon the ground that appellant had lost possession and control of the premises in question, was proper. The Alcoholic Beverage Law (R. S. 33:1-96) provides that, among other requisites, a renewal license must cover "the same licensed premises" as the expired license. This contingency obviously could not be met by the appellant. It follows, therefore, that appellant was not in a position to obtain a renewal of his former license. Gimber v. Galloway, Bulletin 427, Item 9; cf. Rittenger v. Bordentown et al., Bulletin 547, Item 10, and cases therein cited. No transfer for the licensing year commencing July 1, 1943 could be granted, of course, since appellant held no license for such period.

It may be added that appellant could not apply for a new license, as distinguished from a renewal, because respondent's numerical quota for consumption licenses in its municipality was exhausted.

While I am sympathetic with the plight in which appellant finds himself, I have no alternative, in view of the specific provisions of the Alcoholic Beverage Law, other than to affirm respondent's action.

Accordingly, it is, on this 24th day of January, 1944,

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

ALFRED E. DRISCOLL
Commissioner.

- 9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - SALE OF ALCOHOLIC BEVERAGES TO PERSONS ACTUALLY OR APPARENTLY INTOXICATED, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 20 - PERMITTING BRAWL ON LICENSED PREMISES, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 20 - 60 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against
)
)
 MARIE JOHNSON
 T/a MARIE'S TOWN TAVERN
 White Horse Pike & Evergreen Ave.,
 Somerdale, N. J.,)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Borough Council of the Borough of Somerdale.)
 -----)

Marie Johnson, Pro Se.
 Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleads guilty to charges alleging, in substance, that:

(1) and (2) On October 2, 1943, and prior thereto, she sold alcoholic beverages to two minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

(3) On October 14, 1943 she sold alcoholic beverages to intoxicated persons, in violation of Rule 1 of State Regulations No. 20.

(4) On October 14, 1943 she permitted a brawl in her licensed premises, in violation of Rule 5 of State Regulations No. 20.

On October 2, 1943 Louis ----, a nineteen year old minor, was arrested as a drunken and disorderly person. Upon questioning him, it was learned that, during the evening of October 1, 1943 and continuing through the early hours of the next morning, he was served "about four glasses of whiskey and about ten or fifteen glasses of beer" at the defendant's tavern by the bartender. His wife, Henrietta ----, although but seventeen years of age, had also been served alcoholic beverages on numerous occasions during the months of June and July 1943 by the defendant.

The defendant admits that she had personally served Louis ---- with alcoholic beverages "six or seven times" despite the fact that "he looked young." She further admits that she knew that Henrietta ---- is a minor.

On October 14, 1943 two ABC agents entered the defendant's tavern in the midst of a drunken brawl between two of the defendant's male patrons. Before the latter were finally separated by the agents, one of the participants was seriously beaten about the face and blood spurted from a laceration on his forehead. Both of these men were in an extreme state of intoxication. The bartender admitted that one of the men had been "drinking all night up to closing time and started again" in the morning. Nevertheless, he served him "15 or 20 beers" during that morning. He also admitted serving "two whiskies and two beers" to the other man, although he was "feeling pretty good" when

he entered the tavern. It further appears that the bartender made no attempt to avoid the altercation, which had been preceded by a verbal argument which continued for some period of time and, after the brawl started, made only feeble efforts to stop it.

It is a constant source of amazement to me that licensees will hold their license privileges so lightly as to jeopardize deliberately their means of livelihood. I confess that I cannot understand why, as in this case, a licensee will flagrantly defy the law and permit her business to be conducted with so little, if any, regard for the consequences that must inevitably follow. If the defendant had personally participated in the trend of events which led to the violations that occurred on October 14, 1943, or if she did not otherwise have a clear record, I would seriously consider revoking her license outright. Her lack of direct implication in those violations, and the fact that she has never heretofore been cited in disciplinary proceedings, while saving her from a complete deprivation of her license privileges, cannot serve, however, to avert a substantial penalty. A suspension for a period of sixty days will, I trust, impress upon her the necessity of strict compliance with the Alcoholic Beverage Law and the Regulations adopted pursuant thereto. Any further violation may well result in her forced retirement from the liquor business.

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

ORDERED, that Plenary Retail Consumption License C-4, heretofore issued by the Borough Council of the Borough of Somerdale to Marie Johnson, t/a Marie's Town Tavern, for premises on White Horse Pike & Evergreen Avenue, Somerdale, be and the same is hereby suspended for a period of sixty (60) days, commencing at 2:00 A.M. January 31, 1944 and terminating at 2:00 A.M. March 31, 1944.

ALFRED E. DRISCOLL
Commissioner.

10. DISCIPLINARY PROCEEDINGS - PERMITTEE EMPLOYED BY STATE LICENSEE MAY NOT WORK FOR RETAIL LICENSEE - SOLICITOR'S PERMIT SUSPENDED FOR 5 DAYS.

In the Matter of Disciplinary Proceedings against ISADORE KAPLAN 363 North 12th Street Newark, 7, N. J.,

CONCLUSIONS AND ORDER

Holder of Solicitor's Permit No. 457, issued by the State Commissioner of Alcoholic Beverage Control.

Isadore Kaplan, Pro Se.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant, holder of a solicitor's permit, pleaded non vult to the following charge:

"On September 18, 1943, October 2, 1943, November 19, 1943 and December 5, 1943, while you were interested in the manufacturing and the wholesaling of alcoholic beverages by reason of your employment as a solicitor for Joseph Hensler Brewing Company, holder of a New Jersey limited brewery.

license, you were at the same time also interested in the retailing of alcoholic beverages at the retail licensed premises of Clinton Manor Inc., 104 Clinton Avenue, Newark, New Jersey, by reason of your employment on said retail licensed premises; such being in violation of R. S. 33:1-43."

It appears that the defendant, who was employed by a wholesale licensee as a solicitor, on the four evenings in question was also employed as a bartender by the retail licensee. He frankly admitted the violations charged and stated that he had helped out the retail licensee on four special occasions when dances were being held on the latter's licensed premises. Defendant denied ever working for any other retail licensee.

The defendant has no prior record and, in the absence of any aggravating circumstances, a five-day suspension of his solicitor's permit will be imposed. Re Siciliano, Bulletin 580, Item 5.

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

ORDERED, that Solicitor's Permit No. 457, issued to Isadore Kaplan by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for five (5) days, commencing at 7:00 A.M. January 31, 1944 and terminating at 7:00 A.M. February 5, 1944.

ALFRED E. DRISCOLL
Commissioner.

11. DISCIPLINARY PROCEEDINGS - CHARGES OF SELLING ALCOHOLIC BEVERAGES TO MINORS, 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)
PETER ANDROS)
T/a PARADISE GRILL)
State Highway #35)
Middletown, N. J.,)
Holder of Plenary Retail Consumption License C-9, issued by the)
Township Committee of the Township of Middletown.)

CONCLUSIONS
AND ORDER

Theodore D. Parsons, Esq., Attorney for Defendant-Licensee.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The following charges have been preferred against the licensee, to wit:

"1. On the night of June 3, 1943 and the early morning of June 4, 1943, you sold alcoholic beverages at your licensed premises to Joseph ----, John ----, Roger ----, Mildred ----, Charles ---- and Margaret ----, minors, and on the night of June 17, 1943 and the early morning of June 18, 1943, you sold alcoholic beverages at your licensed premises to John ----, Mildred ----, Marjorie ----, Charles ----, Margaret ----, Phillip ---- and Joseph F ----, minors, in violation of R. S. 33:1-77.

"2. On the dates and at the times as aforesaid, you sold, served and delivered, and allowed, permitted and suffered the service and delivery of alcoholic beverages at your licensed premises to the above mentioned individuals, persons under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon the licensed premises, in violation of Rule 1 of State Regulations No. 20."

Licensee has denied all the charges and, by implication, alleges that the charges against him were inspired by the fact that, on the night of June 17th or the early morning of June 18th, one of the dates specified in the charges, some of the minors involved were arrested as the result of a complaint made against them by the licensee and his wife for breaking and entering part of the licensed premises and carrying away various articles of merchandise.

Three of the nine minors involved are now in military service and were not available to testify at the hearing. The alleged sales were not corroborated by any testimony except that given by the six minors who did appear and the case presents a square conflict between their testimony and that produced on behalf of defendant.

The six minors testified that each one, on one or both of the occasions, was served, or permitted to consume, alcoholic beverages at the licensee's place of business. They testified that service was made by either the licensee, his wife, or by one or both of two witnesses produced on behalf of the licensee, namely, the Figaro girls.

The licensee produced on his behalf his wife, Mrs. Georgia Andros, Charles H. Rupp, Recorder of the Township of Middletown, William A. Fix and Melvin Leek, members of the police force of Middletown Township, and Sarah and Kay Figaro, the two girls mentioned above. The licensee, his wife, Sarah Figaro and Kay Figaro each denied that they ever served any alcoholic beverages to any of the minors.

The testimony of the minors, while in accord as to each one being served at one time or another with drinks of alcoholic beverages at the licensee's place of business, differed very materially in other respects. Apparently, on one or both of the evenings in question, the minors, or at least some of them, were present at the licensee's place of business. Their testimony concerning what they drank, where they were served, how they were served and by whom they were served, leaves much to the imagination. On the other hand, there is no doubt that, late on the evening of June 17th or on the early morning of June 18th, some of the minors did forcibly enter part of the licensed premises and remove various articles of merchandise consisting of coffee, glasses and some automobile tools. After they left the premises, Mrs. Andros and her husband reported the incident to the Middletown Police. Shortly thereafter, the automobile in which these minors were riding was stopped by Officers Fix and Leek and all the occupants brought to Police Headquarters. In the car in which they were riding was found the merchandise that they had taken from the Andros establishment.

The two police officers testified that at the time of the arrest none of the minors showed any evidence of intoxication and that, in response to direct questions, they stated they had not had anything to drink. The Police Recorder testified that, at a subsequent hearing before him the Sunday after June 17th, the minors further stated, in response to a direct question by him, that they had not been served any alcoholic beverages at defendant's premises. The testimony of Mrs. Andros and the Police Recorder is to the effect that Mrs. Andros withdrew the complaint on the promise that the stolen merchandise would be paid for, and it does appear definitely

that one of the minors paid Mrs. Andros the sum of \$8.00. Some of the minors, while not disputing the payment of the sum of \$8.00, stated that it was for a bill owed to Mrs. Andros for drinks, but, in view of the positive testimony of Mrs. Andros and especially of Recorder Rupp, the testimony of the minors in this respect cannot be believed. Other discrepancies appear in the testimony of the various minors, especially that Mrs. Andros was at the premises, when it appears, in fact, that she was attending a movie at Red Bank on the night of June 17th, and that Sarah Figaro or Kay Figaro served drinks, although both Figaro girls denied under oath that they were in defendant's premises on either of the evenings in question.

The testimony of the two police officers and the Recorder, who are public officials and experienced in matters of this kind, is in accord that at no time during the court proceedings in which the minors were involved was any statement made that alcoholic beverages had been served to any of them at the licensee's place of business, and further that the payment of the sum of \$8.00 to Mrs. Andros was in settlement of the merchandise taken from the licensee's place of business on the night in question. This is supported by the testimony of both the Figaro girls and Mr. and Mrs. Andros, and makes difficult the placing of any great weight on the testimony of the minors involved in this proceeding.

It is well settled that the burden of proof must be borne by the Department. The fact that the licensee has ever since 1934 enjoyed a good record makes doubly difficult the placing of such credibility upon the stories of the various minors as to warrant a finding of guilt upon the evidence before me. It is, therefore, my opinion that the Department has failed to sustain the burden of proof necessary to warrant a finding of guilt in this matter, and, therefore, the charges will be dismissed.

Although the conflict in the testimony in this case has been resolved in the licensee's favor, I direct his attention to the fact that he must be extremely cautious in the future concerning the service of beverages to minors at his premises. The present experience should serve as a warning that he may not so readily receive the benefit of any doubts that may exist in any proceedings hereafter brought against his license. A word to the wise is sufficient!

Accordingly, it is, on this 24th day of January, 1944,

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

Alfred E. Driscoll
Commissioner.