

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

BULLETIN 748

FEBRUARY 6, 1947.

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS (Piscataway Township) - ILLICIT LIQUOR - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING MATERIAL FACT - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS, LESS 5 FOR PLEA.
2. FAIR TRADE - NOTICE OF COMPLETE PUBLICATION.
3. DISCIPLINARY PROCEEDINGS (Little Falls) - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR PLEA.
4. DISCIPLINARY PROCEEDINGS (Hoboken) - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS, LESS 5 FOR PLEA.
5. SEIZURE - FORFEITURE PROCEEDINGS - ARTICLES USED OR ADAPTABLE FOR USE IN OPERATION OF AN UNREGISTERED STILL ORDERED FORFEITED - PADLOCKING WAIVED.
6. DISCIPLINARY PROCEEDINGS (New Brunswick) - ON PETITION TO RECONSIDER PENALTY - SUSPENSION REDUCED.
7. APPELLATE DECISIONS - GROVER v. LOGAN.
8. DISCIPLINARY PROCEEDINGS (Paterson) - ILLICIT LIQUOR - FALSE STATEMENT IN LICENSE APPLICATION - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS, LESS 5 FOR PLEA.
9. COURT DECISIONS - NEW JERSEY SUPREME COURT - CEDAR RESTAURANT & CAFE CO. v. ERWIN B. HOCK, DEPUTY COMMISSIONER - WRIT OF CERTIORARI DISMISSED.
10. DISCIPLINARY PROCEEDINGS (Paterson) - CHARGES OF SALES TO MINOR DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.
11. DISCIPLINARY PROCEEDINGS (Paterson) - CHARGES OF SALES TO MINORS DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.
12. ACTIVITY REPORT FOR JANUARY, 1947.
13. DISCIPLINARY PROCEEDINGS (Pine Hill) - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.
14. STATE LICENSES - NEW APPLICATIONS FILED.

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

BULLETIN 748

FEBRUARY 6, 1947.

1. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - FALSE STATEMENT IN
LICENSE APPLICATION CONCEALING MATERIAL FACT - PREVIOUS RECORD -
LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

LOUIS & FRANK MALANG)
T/a NINE O'CLOCK CLUB)
South Washington Ave.)
Piscataway Township)
P.O. New Brunswick, R.D. 2, N. J.,)

CONCLUSIONS
AND ORDER

• Holders of Plenary Retail Consump-)
tion License C-11, issued by the)
Township Committee of the Township)
of Piscataway.)

Louis & Frank Malang, Defendant-licensees, by Louis Malang.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

Defendant-licensees plead non vult to the following charges:

"1. On January 6, 1947, you possessed illicit alco-
holic beverages at your licensed premises, viz., one
4/5 quart bottle labeled 'Ballantine's Liqueur Blended
Scotch Whisky', one 4/5 quart bottle labeled 'The Blended
Scotch Whisky of the White Horse Cellar' and one 4/5 quart
bottle labeled 'Walker's DeLuxe Straight Bourbon Whiskey',
all of which bottles contained alcoholic beverages not
genuine as labeled; such possession being in violation of
R. S. 33:1-50.

"2. In your application filed with the Township Com-
mittee of the Township of Piscataway and upon which you
obtained your current plenary retail consumption license,
you falsely stated 'No' in answer to Question No. 41,
which asks, 'Have you or has any person mentioned in this
application ever had any interest, directly or indirectly,
in any alcoholic beverage license in New Jersey which was
surrendered, suspended or revoked?', whereas in truth and
fact your alcoholic beverage license for the 1943-44 period
had been suspended for 10 days, effective January 4, 1944;
such false statement being in violation of R. S. 33:1-25."

The departmental file discloses that on January 6, 1947, an ABC
investigator tested 51 open bottles of liquor in defendants' tavern.
The investigator seized three bottles when preliminary tests indi-
cated that the contents thereof were not genuine as labeled.
Subsequent analyses of the contents of the bottles in question by the
Department chemist disclosed several differences in characteristics
between the whiskey described on the labels and that in the bottles.

Defendants deny any knowledge relative to the violation. A
licensee is absolutely responsible, however, for any "refills" found
in his stock of liquor. Re Kurian, Bulletin 517, Item 2.

It was stated in the application filed with the Township Com-
mittee, pursuant to which defendants obtained their current plenary
retail consumption license, that defendants had never had their
license suspended whereas in fact their license had been suspended

for ten days by the State Commissioner during the 1943-44 licensing period after defendant had been found guilty of selling alcoholic beverages to minors. Re Malang, Bulletin 600, Item 8.

Under the circumstances, I shall suspend defendants' license for a period of thirty days, less five days for the plea entered herein, or a net suspension of twenty-five days.

Accordingly, it is, on this 27th day of January, 1947,

ORDERED that Plenary Retail Consumption License C-11, issued by the Township Committee of the Township of Piscataway to Louis & Frank Malang, t/a Nine O'Clock Club, for premises South Washington Avenue, Piscataway Township, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 2:00 a.m. February 3, 1947, and terminating at 2:00 a.m. February 28, 1947.

ERWIN B. HOCK
Deputy Commissioner.

2. FAIR TRADE -- NOTICE OF COMPLETE PUBLICATION.

January 27, 1947.

The next official publication of minimum resale prices pursuant to Fair Trade rules (Regulations No. 30) will become effective on March 3, 1947. Price listings must be filed at the offices of this Department not later than Monday, February 3, 1947.

It is the Department's decision that the publication shall combine all of the prices into one complete pamphlet superseding the January 1946 publication and the three separate succeeding supplements of May, August and December 1946.

In submitting price lists to the Department for this complete publication, it is requested that:

(1) A complete schedule of all items offered for sale by manufacturers and wholesalers in this State shall be submitted. Exceptions will be considered only if good cause be shown on or before Monday, February 3, 1947. However, listers are placed on notice that pursuant to the ruling of October 22, 1945, brands of alcoholic beverages not listed in Fair Trade publications may not be price-advertised (including direct or indirect reference to price) in any periodical, publication, circular, handbill or direct mailing piece in New Jersey. Listers will recognize the extreme disadvantage they impose upon retailers who are restricted in the sales promotion of brands not listed in Fair Trade.

(2) While the OPA has ended price control over alcoholic beverages, the Department desires the maintenance of the schedule of former OPA markups (33-1/3% on spirits; 45% on cordials and liqueurs and 50% on wines) for all items listed in the forthcoming publication. It is of the greatest economic importance to retailers and to all branches of the industry alike that retailers shall be afforded fair markups.

Notification of the proportionate share of the aggregate expense involved will be made to participating companies as soon as the complete price pamphlet is mailed to all retail licensees.

John H. Michelson
Deputy Commissioner.

3. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
 Proceedings against)

MINNIE GOLDBERG)
 7 Paterson Avenue)
 Little Falls, N. J.,)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consump-)
 tion License C-3 issued by the)
 Township Committee of the Township)
 of Little Falls.)

M. Metz Cohn, Esq., Attorney for Defendant-licensee.
 Edward F. Ambrose, Esq., appearing for Department of Alcoholic
 Beverage Control.

The defendant pleaded not guilty to a charge alleging that she possessed an illicit alcoholic beverage, to wit, a 4/5 quart bottle labeled "Four Roses Fine Blended Whiskey", which contained an alcoholic beverage not genuine as labeled, in violation of R.S. 33:1-50.

On October 16, 1946, a Federal ATU agent removed the bottle in question from the defendant's licensed premises. Upon analysis by the Federal chemist it was disclosed that the contents of the bottle varied substantially in proof, acid content and color from an authentic sample of the same product. The chemist, whose testimony stands uncontradicted, stated that the beverage contained in the seized bottle was not "Four Roses Fine Blended Whiskey".

No witnesses were produced by the defendant. The defense is predicated upon her contention that she had no knowledge of the violation and that she did not personally participate therein. Assuming, without deciding, the truth of such facts, they present no defense to the violation, the gravamen of which is the mere possession of illicit beverages upon licensed premises. Re Kurian, Bulletin 517, Item 2.

I find the defendant guilty as charged.

Since the defendant has not heretofore suffered any suspension of her license, I shall impose the usual fifteen-day penalty. Re Rudolph, Bulletin 680, Item 1.

Accordingly, it is, on this 28th day of January, 1947,

ORDERED that Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Little Falls to Minnie Goldberg, for premises 7 Paterson Avenue, Little Falls, be and the same is hereby suspended for a period of fifteen (15) days. Pursuant to Notice of August 25, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK
 Deputy Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW F.A.A. TRADE MINIMUM - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

SPARROW CIGAR CO., INC.)
124-126 Washington Street)
Hoboken, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution License D-29, issued by the Board of Commissioners of the City of Hoboken.)
-----)

Defendant-licensee, by Leon Chinitz, Pres.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant pleaded non vult to a charge that it sold a pint bottle of Lord Calvert Blended Whiskey below the established minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

On December 27, 1946, the manager, then in charge of the liquor department of defendant-licensee, sold to an agent of the State Department of Alcoholic Beverage Control the pint bottle of whiskey above described for the price of \$2.68. The established minimum resale price of this product is \$2.85. Bulletin 723.

Defendant has no prior adjudicated record. I shall, therefore, impose the minimum suspension of ten days, less five days because of the plea, leaving a net suspension of five days. Re Mack Drug Co., Inc., Bulletin 635, Item 9.

Accordingly, it is, on this 28th day of January, 1947,

ORDERED that Plenary Retail Distribution License D-29, issued by the Board of Commissioners of the City of Hoboken to Sparrow Cigar Co., Inc., for premises 124-126 Washington Street, Hoboken, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. February 3, 1947, and terminating at 9:00 a.m. February 8, 1947.

ERWIN B. HOCK
Deputy Commissioner.

5. SEIZURE - FORFEITURE PROCEEDINGS - ARTICLES USED OR ADAPTABLE FOR USE IN OPERATION OF AN UNREGISTERED STILL ORDERED FORFEITED - PADLOCKING WAIVED.

In the Matter of the Seizure:) Case No. 7074
 on November 23, 1946 of a)
 quantity of sugar, empty five-)
 gallon cans and other personal)
 property, in a barn located at) ON HEARING
 138 West 22nd Street, in the) CONCLUSIONS AND ORDER
 City of Bayonne, County of Hudson)
 and State of New Jersey.)
 - - - - -)

Max Konigsberg, Pro Se.

Harry Castelbaum, Esq., appearing for the State Department of Alcoholic Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 2 of the Revised Statutes, to determine whether a quantity of sugar, empty five-gallon cans and other personal property, described in a schedule attached hereto, seized on November 23, 1946 in a barn located at 138 West 22nd Street, Bayonne, N. J., constitute unlawful property and should be forfeited, and, further, to determine whether the premises should be padlocked.

It appears that on November 23, 1946, a detective of the Bayonne Police Department noticed a truck entering the barn in question. He suspected that unlawful activities were being carried on there and called other officers, with whom he went to the bar. There they found the sugar, empty five-gallon cans such as are generally used as containers for illicit alcohol, two hydrometers for testing alcohol and other articles.

The officers questioned Max Konigsberg, one of the owners of the premises, who resided in a dwelling thereon. He claimed to have rented the barn to a man known to him as J. Dominick, whose address or whereabouts is unknown to him. He disclaimed any knowledge of the presence in the barn of the articles which were seized, although he acknowledged ownership of other articles stored in the barn. Konigsberg was arrested on the charge of possessing and storing implements and paraphernalia for the unlawful manufacture of alcoholic beverages.

The State Department of Alcoholic Beverage Control was notified of these events and the seized property turned over to it.

When the matter came on for hearing pursuant to R. S. 33:2-4, Max Konigsberg appeared and sought to avoid padlocking of the premises. He did not oppose forfeiture of the seized property nor did anyone else appear to contest such forfeiture.

The nature of the articles seized, considered in conjunction with the failure of the owner thereof to make any claim thereto, warrants the inference that they are articles, implements or paraphernalia used or adaptable for use in connection with the operation of an unregistered still. Therefore, these articles constitute unlawful property within the meaning of R. S. 33:2-2, and are subject to forfeiture under the provisions of R. S. 33:2-5. In addition, the premises are subject to padlocking.

I was inclined to padlock the premises, or at least the barn, because there was a large still seized in Konigsberg's home in 1939. However, in fairness, consideration must be given to the fact that the Grand Jury did not indict Konigsberg in that case. His brother apparently was the person responsible for such still and convicted in criminal proceeding.

In the instant case, at best it is only an inference, from the surrounding circumstances, that Konigsberg was the owner of the unlawful property in the barn or knew or should have known it was there. There is no substantial evidence to that effect. He is in the excavating business and has no criminal record. While not controlling in these proceedings, it is to be noted that the criminal charges against Konigsberg in the instant case were dismissed in police court. I am reluctant to impose the padlocking penalty merely because of the possibility that Konigsberg knew of the unlawful activities therein. I shall therefore waive padlocking.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property and that the same be and hereby is forfeited in accordance with the provisions of R. S. 33:2-5, and that it be retained for the use of hospitals and State, county and municipal institutions, or destroyed, in whole or in part, at the direction of the State Commissioner of Alcoholic Beverage Control.

Dated: January 24, 1947.

ERWIN B. HOCK
Deputy Commissioner.

SCHEDULE "A"

- 34 - 100 pound paper bags of dextrose sugar
- 19 - empty 5-gallon cans
- 1 - electric switch box
- 2 - large funnels
- 2 - hydrometers
- 2 - glass testing cups
- 1 - Firestone truck tire and rim

6. DISCIPLINARY PROCEEDINGS - ON PETITION TO RECONSIDER PENALTY -
SUSPENSION REDUCED.

In the Matter of Disciplinary
Proceedings against

TANZMAN'S, INC.
115 Albany Street
New Brunswick, N. J.,

ON PETITION
O R D E R

Holder of Plenary Retail Distribution License D-4 for the fiscal years 1945-46 and 1946-47, issued by the Board of Commissioners of the City of New Brunswick.

Philip Blacher, Esq., Attorney for Petitioner.

On January 23, 1947, I suspended the license now held by defendant herein for a period of fifteen days commencing at 9:00 a.m. January 29, 1947, and terminating at 9:00 a.m. February 13, 1947. The suspension was imposed after defendant had pleaded non vult to two charges which are set forth in the Conclusions and Order previously entered herein.

Petitioner has filed a petition herein alleging that the violations were entirely unintentional, and that defendant fully disclosed the situation to the investigators without any attempt at evasion. Petitioner recites that a fifteen-day penalty works an undue hardship on defendant and requests a reduction in the period of suspension.

I find, upon reconsideration, that both charges were so intimately connected that the minimum period of suspension in "front" cases where the facts were fully disclosed prior to January 1, 1946 should, in fairness to defendant, be imposed herein. Cf. Re Annita, Bulletin 580,

Item 8. I conclude, therefore, that defendant will have been sufficiently punished if the license is suspended for ten days, instead of fifteen days.

Accordingly, it is, on this 29th day of January, 1947,

ORDERED that the suspension heretofore imposed be lifted after ten days thereof have expired, and that Plenary Retail Distribution License D-4, issued by the Board of Commissioners of the City of New Brunswick to Tanzman's, Inc., be restored to full force and operation, effective at 9:00 a.m. February 8, 1947.

ERWIN B. HOCK
Deputy Commissioner.

7. APPELLATE DECISIONS - GROVER v. LOGAN.

CHARLES FRANCIS GROVER, SR.,)

Appellant,)

-vs-)

TOWNSHIP COMMITTEE OF THE TOWNSHIP)
OF LOGAN,)

Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

James B. Avis, Esq., Attorney for Appellant.

J. Edward McGlinchy, Esq., Attorney for Respondent.

This is an appeal from the denial of an application for a plenary retail consumption license for premises located on State Highway 44, in the Township of Logan.

At the outset, let it be noted that the appellant is apparently qualified in all respects to hold a retail liquor license. The reasons advanced by the respondent for the denial are that public sentiment is opposed to the granting of any additional licenses and that the one plenary retail consumption license now in existence sufficiently satisfies the needs of the residents of the Township.

Logan Township is a rural community, consisting of four settlements, the largest being Bridgeport, which has a population of 500 persons, according to the testimony of Albert W. Dunk, Township Clerk.

The Township's ordinance, adopted May 11, 1936, provides that:

".....the number of licenses to sell alcoholic beverages at retail within the limits of the Township of Logan, County of Gloucester, and State of New Jersey, shall be limited to the issuance of one license per thousand of population."

The Township of Logan, according to the Federal census of 1940, has a population of 1,630. Harry C. Haines, Chairman of the respondent Township Committee, testified that, in presenting the application for a license filed by the appellant to the two other members of the Township Committee for consideration, he mentioned the ordinance limiting licenses to one for each thousand people, and that in his opinion the Township does not have a population of 2,000. Committee Chairman Haines further testified that he had been advised by the Ration Board that there are approximately 1,800 people in the Township. No other testimony was offered by the parties hereto to indicate the present population of the Township.

State Commissioner Burnett made the following ruling relative to the ordinance referred to:

"The language, however, is clear: 'shall be limited to the issuance of one license per thousand of population'. 'Per' means, in this connection, 'for each'. Until the population reaches two thousand (2,000), a second license cannot be issued." Federici v. Logan, Bulletin 126, Item 5.

Aside from the question of the Committee's jurisdiction, under the ordinance, to issue an additional license in the absence of proof that the Township has a population of 2,000 or more persons, the testimony presented does not indicate a need for issuance of a second license.

Three witnesses presented on behalf of the appellant testified that they had no objection to the issuance of a license to the appellant; two others thought it would be a good thing for the community; and another witness believed the appellant should have a license.

The appellant testified that the licensed premises now being operated in Logan Township are located approximately one mile from his residence.

Committeeman Gilbert Rostaing testified that he voted against the issuance of the license to appellant because "In the first place it was public opinion." He testified further: "we had a saloon in town which supplied the demands of the public...."

Committeeman Foster V. Hunt, Sr. testified that his reason for voting against the issuance of the license to appellant was based "on the sentiment of the people of the community."

Committee Chairman Haines did not vote on the appellant's application. He testified, however, that he was opposed to the issuance of another liquor license because of public sentiment against it also because he believed that one license in the municipality was sufficient.

Determination by a municipal issuing authority that there is no need or necessity for the issuance of an additional liquor license should, on appeal, be given considerable weight. The sale of intoxicating liquor is in a class by itself. Paul v. Gloucester, 50 N.J.L. 585, 595. "No one has a right to demand a license; license is a special privilege granted to the few, denied to the many." Ibid. 596. As Mr. Justice Field, in Crowley v. Christensen, 137 U. S. 86, 91, stated:

"There is no inherent right in a citizen to sell *** intoxicating liquors by retail; it is not a privilege of a citizen of the State or of a citizen of the United States."

See also Meehan v. Excise Commissioners, 73 N. J. L. 382, 387; Bumball v. Burnett, 115 N. J. L. 254, 255.

It is my conclusion, from the record before me, that the appellant has not sustained the burden of proof necessary to show that the respondent acted unreasonably or contrary to the public interest, or in any manner abused the discretionary authority conferred upon it by the Alcoholic Beverage Law. Hence, I shall affirm the action of the respondent in denying the license.

Accordingly, it is, on this 31st day of January, 1947,

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

ERWIN B. HOCK
Deputy Commissioner.

8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - FALSE STATEMENT IN
LICENSE APPLICATION - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS,
LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against)

HYMAN COHEN)
149 River Street)
Paterson 1, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-266, issued by the)
Board of Alcoholic Beverage Control)
of the City of Paterson.)
- - - - -)

Nussman & Kaplan, Esqs., by Louis Nussman, Esq., Attorney for
Defendant-licensee.

William F. Wood, Esq., appearing for Department of Alcoholic
Beverage Control.

Defendant has pleaded non vult to charges alleging (1) that he
possessed illicit alcoholic beverages on his licensed premises, in
violation of R. S. 33:1-50; and (2) that he falsely answered a ques-
tion in his application for his current license, in violation of
R. S. 33:1-25.

As to the first charge: On November 21, 1946, an inspector of
the Alcohol Tax Unit, Internal Revenue Service, Federal Treasury
Department, seized, on defendant's licensed premises, one 4/5 quart
bottle labeled "Schenley Reserve Blended Whiskey" and one 4/5 quart
bottle labeled "Three Feathers Reserve Blended Whiskey". Subsequent
analyses by the Federal chemist disclosed that the contents thereof
were not genuine as labeled.

As to the second charge: The defendant failed to disclose in
his application for license for the present fiscal year that his
license was suspended on December 20, 1938 for a period of two days.
Defendant's explanation of his failure to disclose this prior
suspension is that his application was prepared for him by another
person. This is no excuse.

The defendant has no other adjudicated record.

Under all the circumstances, I shall suspend the license for a
period of fifteen days on the first charge, Re Rudolph, Bulletin 680,
Item 1, and for an additional five days on the second charge. Five
days of the total suspension will be remitted because of the plea,
leaving a net suspension of fifteen days.

Accordingly, it is, on this 31st day of January, 1947,

ORDERED that Plenary Retail Consumption License C-266, issued by
the Board of Alcoholic Beverage Control of the City of Paterson to
Hyman Cohen, for premises 149 River Street, Paterson, be and the
same is hereby suspended for a period of fifteen (15) days. Pursu-
ant to notice of August 23, 1946, Bulletin 727, Item 12, the
effective date of such suspension is reserved for future determina-
tion.

ERWIN B. HOCK
Deputy Commissioner.

9. COURT DECISIONS - NEW JERSEY SUPREME COURT - CEDAR RESTAURANT & CAFE CO. v. ERWIN B. HOCK, DEPUTY COMMISSIONER - WRIT OF CERTIORARI DISMISSED.

CEDAR RESTAURANT & CAFE CO.,)
trading as WEST END CASINO,)
Prosecutor,)
-vs-)
ERWIN B. HOCK, Deputy Commissioner)
of the State Department of Alco-)
holic Beverage Control,)
Respondent.)
- - - - -

Argued October 1946. Decided January 29, 1947.

On writ of certiorari.

Before Chief Justice Case, Justices Heher and Colie.

For the prosecutor, Kasen, Schnitzer & Kasen (Daniel G. Kasen, of counsel).

For the respondent, Walter D. Van Riper, Attorney General of New Jersey (Samuel B. Helfand, Deputy Attorney General, of counsel).

The opinion of the court was delivered by

COLIE, J.

Prosecutor holds a Seasonal Retail Consumption License for a part of premises known as the West End Casino in Long Branch, N. J. On July 18, 1946, an agent of the Alcoholic Beverage Commission, hereinafter referred to as the Commission, while making a routine inspection of the licensed premises, tested all the open bottles in both of the bars on the licensed premises. The fifty-four bottles from the main bar were found satisfactory. Eight of the twenty-three bottles from a small bar known as the Yacht Bar were "off-proof." Analysis by the Commission's chemist showed that seven of the seized bottles were substantially diluted with water or other non-alcoholic beverage. Prosecutor does not dispute that its employee, the bartender of the Yacht Bar, had diluted and misappropriated the contents of the seized bottles to his own use. The Commission charged that prosecutor "possessed illicit alcoholic beverages at your licensed premises, *** all of which bottles contained alcoholic beverages not genuine as labeled; such possession being in violation of R. S. 33:1-50." After a hearing held on the authority of R. S. 33:1-31 the prosecutor was found guilty as charged and its license suspended for thirty days.

Prosecutor was allowed a writ of certiorari to review the ruling of the Commission and sets forth four reasons for reversal as follows:

"1. The Supreme Court held in State v. Pinto, 129 N. J. L. 255 (1942) that R. S. 33:1-50, which prosecutor was charged with violating, does not apply where the principal did not aid, encourage or connive at the perpetration of the violation committed by its employee. The department wholly failed to prove that prosecutor aided, encouraged or connived in the action of the bartender and prosecutor affirmatively established the contrary.

"2. The offense charged against the prosecutor was possession of illicit alcoholic beverages. The testimony conclusively shows that the alcoholic beverages which the department considers illicit were not in the possession of the prosecutor.

"3. The offense charged against the prosecutor was possession of illicit alcoholic beverages. The Department wholly failed to prove that the beverages which were the subject matter of the charge were illicit.

"4. The penalty ordered by defendant is grossly excessive and disproportionate to the offense charged against the licensee, under the circumstances of the instant case, conflicts with defendant's established practice in such matters and amounts to an abuse of discretion."

We fail to perceive the force of the argument based upon State v. Pinto, 129 N. J. L. 255. Pinto was indicted on three counts: one, that he knowingly and unlawfully sold alcoholic beverages from his auto-truck; two, he knowingly and unlawfully sold alcoholic beverages from the truck by his agent and servant; three, he aided and abetted such sale. In reversing the judgment of conviction, the Supreme Court said that there was no proof that the employee's unlawful act was authorized or directed by the employer or that the defendant consented to or aided his employee in making the unlawful sale. There being no evidence of either knowledge or aiding and abetting, the conviction was properly reversed. The Pinto case is clearly distinguishable upon another ground. It was based upon an unlawful sale by an agent and it was necessary to bring home knowledge to the principal. In the instant case, the charge is possession and the prosecutor does not dispute possession of the bottles but merely contends that it was unaware that the contents had been diluted. Knowledge that the beverages were illicit is not essential to guilt. State v. Solomon, 96 N. J. L. 124, reversed on other grounds 97 Id. 252. In Halsted v. State, 41 N. J. L. 552 at 592 the Court of Errors and Appeals said: "As there is an undoubted competency in the law maker to declare an act criminal, irrespective of the knowledge or motive of the doer of such act, there can be, of necessity, no judicial authority having the power to require, in the enforcement of the law, such knowledge or motive to be shown. In such instances the entire function of the court is to find out the intention of the legislature, and to enforce the law in absolute conformity to such intention." We find nothing within the Alcoholic Beverage Control Act, R. S. 33:1-1 et seq. to indicate an intent that the holder of a retail consumption license must have knowledge that he possesses illicit beverages in order to make him amenable to disciplinary action. Our courts have consistently held that such knowledge is not an essential ingredient to conviction for possession under statutes similar to the one under consideration. State v. Solomon, supra, (spurious liquor); Waterbury v. Newton, 50 N.J.L. 534 (illegally colored oleomargarine); Board of Health v. Vandruens, 77 N. J. L. 443, (possession of impure food).

There is no merit in the second reason advanced for reversal that the beverages were not in possession of the prosecutor. The manager of the licensee testified that each of the seized bottles bore an identification mark placed thereon "to preclude a bartender from bringing in his own liquor and selling it at our expense." Furthermore, the presence of the bottles on the premises of the licensee raised a rebuttable presumption of possession which prosecutor did not attempt to overcome.

As to the alleged failure to prove that the beverages were illicit, we see no distinction in principle between the instant case and Panda v. Driscoll, #38 October 1946 Term, Court of Errors and Appeals which is dispositive of prosecutor's argument.

We find no abuse of discretion by the Commission in suspending prosecutor's license for thirty days.

The writ of certiorari is dismissed with costs.

- - - - -

10. DISCIPLINARY PROCEEDINGS - CHARGES OF SALES TO MINOR DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary)
Proceedings against)
GARDINER, JAMES E. and MORRIS SMITH)
27 Paterson Street)
Paterson, N. J.,)
Holder of Plenary Retail Consumption)
License C-348 issued by the Board of)
Alcoholic Beverage Control of the)
City of Paterson.)
- - - - -

CONCLUSIONS
AND ORDER

Schwartz and Schwartz, Esqs., by Louis Schwartz, Esq., Attorneys
for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

Defendants plead not guilty to charges alleging that on November 17, 1946, they sold alcoholic beverages to a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

It appears that, when questioned by ABC agents, the minor signed a statement admitting that on November 17, 1946 he consumed a glass of rum and coke on defendants' licensed premises. At the hearing, however, the minor testified that he did not purchase or consume alcoholic beverages on defendants' premises on the morning in question and that the statement given to the ABC investigators was untrue. The minor testified that he had consumed beer at the home of his aunt but did not reveal this because he believed that by so doing his aunt would become involved in trouble with the law enforcement authorities.

The minor was the only witness who could be produced by the Department to substantiate its charges. In view of his repudiation of his previous admission to ABC investigators that he had purchased and consumed alcoholic beverages on defendants' licensed premises, I have no alternative but to dismiss the within charges.

Accordingly, it is, on this 3rd day of February, 1947,

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

ERWIN B. HOCK
Deputy Commissioner.

11. DISCIPLINARY PROCEEDINGS - CHARGES OF SALES TO MINORS DISMISSED -
DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary)
Proceedings against)

CABIN OF JOY, INC.)
205 - 12th Avenue)
Paterson, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-272, issued by the)
Board of Alcoholic Beverage Control)
of the City of Paterson.)

Peter P. Zangara, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

Defendant-licensee, through its attorney, pleads not guilty to
charges alleging that on November 16, 1946 it sold alcoholic bever-
ages to minors in violation of R. S. 33:1-77 and Rule 1 of State
Regulations No. 20.

It appears that, when questioned by ABC agents, two minors
signed statements admitting the purchase and consumption of beer in
defendant's premises on the night of November 16, 1946, and a third
minor admitted orally to the agents that he had purchased and consumed
beer on the defendant's premises on the night in question. At the
hearing, however, the minors testified that they did not purchase or
consume any alcoholic beverages at defendant's premises on the evening
of November 16, 1946. The minors testified in explanation of the
repudiation of their statements to ABC investigators that they had
consumed beer at the home of an aunt of two of the youths but failed
to reveal this because they believed that by so doing they would in-
volve the aunt in trouble with the authorities.

The minors were the only witnesses who could be produced by the
Department to substantiate its charges. In view of the repudiation
of their previous admissions to ABC investigators that they had pur-
chased and consumed beer on the defendant's licensed premises, I have
no alternative other than to dismiss the within charges.

Accordingly, it is, on this 3rd day of February, 1947,

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

ERWIN B. HOCK
Deputy Commissioner.

ACTIVITY REPORT FOR JANUARY, 1947

12.

ARRESTS:

Licensees and employees	2	Bootleggers	11
Personneling an A.B.C. Officer	1		
Total number of persons arrested			14

SEIZURES:

Brewed malt beverages - gallons	31.34
Distilled alcoholic beverages - gallons	9.81
Wine - gallons	.60

RETAIL LICENSEES:

Total number of premises inspected	960
Total number of premises where alcoholic beverages were gauged	758
Total number of bottles gauged	13,410
Total number of premises where violations were found	76
Total number of violations found	99
Type of violations found:	
Illicit liquor - bottles	32
Unqualified employees	15
Regulations 38 sign not posted	23
Other mercantile business	7
Probable front	7
Disposal permit necessary	7
Prohibited signs	2
Price pamphlet not displayed	5
Other violations	1

STATE LICENSEES:

Premises inspected	15
License applications investigated	24

COMPLAINTS:

Complaints assigned for investigation	375
Complaints investigated, reviewed and closed	397
Investigations completed - not closed administratively	6
Investigations assigned, not yet completed	157

LABORATORY:

Analyses made	105
"Shake-up" cases (alcohol, water and artificial color) - bottles	6
Liquor found to be not genuine as labeled - bottles	22

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made	19
Persons fingerprinted for non-criminal purposes	170
Identification contacts made with other enforcement agencies	136
Motor vehicle identifications via N. J. State Police Teletype	16

DISCIPLINARY PROCEEDINGS INSTITUTED:

Cases transmitted to municipalities	8
Violations involved:	
Sale during prohibited hours	3
Permitting bookmaking	2
Sale to minors	2
Conducting business as nuisance	1
Permitting immoral activity on premises	1
Permitting prostitutes on premises	1
Possessing contraceptives on premises	1
Sale to non-members by clubs	1
Sale to intoxicated persons	1

Cases instituted at Department	24
--------------------------------	----

Violations involved:	
Possessing illicit liquor	12
Fraud and front	4
Sale under Fair Trade price	4
Sale during prohibited hours	2
Bottling by retailer	1
Hindering investigation	1
Permitting bookmaking	1
Sale to non-members by clubs	1
Permitting brawl	1
Possessing contraceptives on premises	1
Purchase from improper source	1
Employment of solicitor by retailer	1
Sale of lottery tickets	1
Sale outside scope of license	1

Cases brought by municipalities on own initiative and reported to Department	16
--	----

Violations involved:	
Sale to minors	9
Hindering investigation	4
Permitting brawls	3
Sale during prohibited hours	3
Conducting business as nuisance	2
Inadequate view into premises during closing hours	2
Licensee working while drunk	2
Permitting hostesses on premises	2
Permitting persons of ill-repute on premises	2
Sale to intoxicated persons	2
Unqualified employees	2
Permitting gambling on premises	1

HEARINGS HELD AT DEPARTMENT:

Total number of hearings held	57
Appeals	17
Disciplinary proceedings	27
Eligibility	10
Seizures	2
Tax Revocation	1

PERMITS ISSUED:

Total number of permits issued	974
Employment	108
Solicitors	160
Social affairs	302
Disposal of alcoholic beverages	230
Special Wine	91
Miscellaneous Permits	113

ERWIN B. HOCK
DEPUTY COMMISSIONER

13. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION
 CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO
 EXERCISE THE RIGHTS AND PRIVILEGES OF LICENSE - ILLEGAL SITUATION
 CORRECTED - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary
 Proceedings against)

PERMELIA GROH and JOSEPH H. KAMBER)
 T/a TWIN CEDAR INN)
 Blackwood Road in Amber Terrace)
 Pine Hill, N. J.,)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consumption
 License C-5, issued by the Borough)
 Council of the Borough of Pine Hill.)
 -----)

Frank M. Lario, Esq., Attorney for Defendant-licensees.
 Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic
 Beverage Control.

Defendants pleaded non vult to the following charges:

"1. In the application filed with the Borough Council of the Borough of Pine Hill by Permelia Groh, and upon which she obtained the current plenary retail consumption license, which license was later transferred on November 6, 1946 to Permelia Groh and Joseph H. Kamber, she falsely stated 'No' in answer to Question 30, which asks: 'Has any individualother 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 Joseph H. Kamber had such interest in that he was a partner with her in said business; her said false statement being in violation of R. S. 33:1-25.

"2. From April 3, 1946 until November 6, 1946, Joseph H. Kamber exercised the rights and privileges of a plenary retail consumption license then being held by Permelia Groh at Blackwood-Clementon Road, Pine Hill Borough, New Jersey, thereby violating R. S. 33:1-26.

"3. From April 3, 1946 until November 6, 1946, Permelia Groh knowingly aided and abetted Joseph H. Kamber to exercise, contrary to R. S. 33:1-26, the rights and privileges of her plenary retail consumption license in the Borough of Pine Hill, thereby violating R. S. 33:1-52."

On April 3, 1946, the license in question was transferred to Permelia Groh and renewed in her name for the present fiscal year. There can be no doubt that, subsequent to April 3, 1946, the licensed business was operated by a partnership consisting of both defendants herein. After the investigation by the State Department of Alcoholic Beverage Control had been started and after the original questioning of Permelia Groh and Joseph H. Kamber, the license was properly transferred on November 6, 1946 to the defendants herein as partners. In an effort to mitigate the effects of the violation herein, it is alleged that defendants were improperly advised when the license first transferred and thereafter renewed. This cannot be accepted as an excuse because Question 30 in the application clearly indicates that the interest of Joseph H. Kamber in the license should have been revealed.

It would appear that both defendants have always been completely qualified and eligible to hold a liquor license, that the unlawful situation has been corrected, and that there are no other convictions for violations of the Alcoholic Beverage Law against the defendants or either of them. I shall, therefore, impose the minimum suspension of twenty days. Re Russo, Bulletin 741, Item 4.

Accordingly, it is, on this 5th day of February, 1947,

ORDERED that Plenary Retail Consumption License C-5, issued by the Borough Council of the Borough of Pine Hill to Permelia Groh and Joseph H. Kamber, t/a Twin Cedar Inn, for premises Blackwood Road in Amber Terrace, Pine Hill, be and the same is hereby suspended for a period of twenty (20) days, commencing at 3:00 a.m. February 18, 1947, and terminating at 3:00 a.m. March 10, 1947.

ERWIN B. HOCK
Deputy Commissioner.

14. STATE LICENSES - NEW APPLICATIONS FILED.

Paul von Stein & H. Leroy Caton
T/a Rae Motor Lines
270 Bertrand Ave.
Perth Amboy, N. J.

Application for Transportation License filed February 4, 1947.

Royal Liquor Distributors, Inc.
1900 Genesee Street

Hamilton Township, P. O. Trenton, N. J.

Application for transfer of Plenary Wholesale License W-62 from Rescom Import Co., Inc., 24 Commerce St., Newark, filed February 4, 1947.

Frank Dandrea and Carmine Cocco
T/a Landisville Beverage Co.
Flower Street & Harding Highway, Landisville
(Buena Vista Township), Atlantic County, N. J.

Application for Limited Wholesale License filed
February 5, 1947.

Erwin B. Hock

Deputy Commissioner.