

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

BULLETIN 464

JUNE 11, 1941.

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

BULLETIN 464

JUNE 11, 1941.

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGE BELOW FAIR TRADE MINIMUM - THIRD OFFENSE - 90 DAYS' SUSPENSION.

In the Matter of Disciplinary )  
Proceedings against )  
  
LOUIS SEIDMAN, )  
1129 Broadway, )  
Camden, N. J., )  
  
Holder of Plenary Retail Con- )  
sumption License C-139, issued )  
by the Municipal Board of Alco- )  
holic Beverage Control of the )  
City of Camden. )  
-----)

CONCLUSIONS  
AND ORDER

Harry M. Mendell, Esq., Attorney for the Defendant-Licensee.  
Robert R. Hendricks, Esq., Attorney for the State Department of  
Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to a charge of selling an alcoholic beverage below the Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

The Department file in this matter discloses that on March 25, 1941 an investigator entered the above licensed premises and purchased from the licensee a fifth-gallon bottle of Wilen Blackberry Wine for the price of fifty-five cents. The minimum retail price at which fifth-gallon bottles of this product could have been sold, lawfully, at that time, was sixty cents. Bulletin 450.

On two separate occasions prior to the instant proceeding the defendant-licensee has been found guilty of selling below Fair Trade price - once, in 1939, when his license was suspended for ten days (Re Seidman, Bulletin 372, Item 11), and again, in 1940, when his license was suspended for twenty days (Re Seidman, Bulletin 412, Item 5).

The defendant-licensee, while frankly admitting that the instant sale had been made below the Fair Trade price, pleads that it was unintentional and asks that the penalty to be imposed be mitigated because of that fact. In support of this contention he states, in a memorandum accompanying the guilty plea, that since his acquisition of a consumption license, some months ago, he has been altering and making over his old premises (which he had theretofore operated as a package goods store) into a combination package store and tavern; that while he "had just opened his bar....he had not been in a position to get going as to his package goods department"; that in his show window a fifth-gallon bottle of Wilen wine was, and had been for some time, openly displayed and price-marked at fifty-five cents; that fifty-five cents had been the correct Fair Trade price of this item up until March 24, 1941, the day preceding the day of the purchase, when the Fair Trade price had been increased to sixty cents; that, because of the confusion and disarrangement occasioned by the extensive remodeling and the extension of his business, the change in price of this product had been overlooked.

As further proof that the sale was innocent and without intent to chisel on the Fair Trade price, the defendant-licensee states that, on the first visit of the investigator, on March 25, 1941, he refused the investigator's tender of fifty cents for the wine, telling the investigator that "the Fair Trade price was fifty-five cents"; that, on the investigator's return and purchase of the same wine for fifty-five cents, later in the day, he refused the investigator's tender of \$2.50 for a quart of Calvert Special Whiskey, telling the investigator "that the Fair Trade price for the Calvert was two dollars and fifty-nine cents"; that had there been any intent to chisel on Fair Trade prices, he could have made both sales, or by selling the Calvert alone, have made three times the profit that he realized on the wine.

Corroboration of the defendant-licensee's allegations of the fact is furnished, to a substantial degree, by the reports of the purchasing investigators. They state that there was evidence that the premises had been undergoing extensive alterations and remodeling; that on the first visit the defendant-licensee refused to sell the wine for less than fifty-five cents; that upon their return and purchase of the wine for fifty-five cents, the defendant-licensee refused to sell, at the same time, a quart of Calvert Special Whiskey for less than \$2.59, the regular Fair Trade price; that while they did not notice any display of Wilen wine in the show window, they did note a price tag, marked fifty-five cents, openly displayed on the stock shelf beneath the Wilen wine bottles.

It further appears that the Fair Trade price of fifth-gallon bottles of Wilen Blackberry Wine had been increased, effective March 24, 1941, to sixty cents (Bulletin 450) and that, for many months prior to that time, the price had remained at fifty-five cents (Bulletin 360; Bulletin 416).

In view of the strong corroborating circumstances, I shall give the defendant-licensee the benefit of the doubt and accept as true his story that the violation was not deliberate. This conclusion does not, of course, absolve the defendant-licensee. Careless failure to note changes in price lists does not excuse a violation of Regulations 30, Rule 6. Re Schwarz Drug Co., Bulletin 307, Item 5; Re Hughes, Bulletin 438, Item 9; Re Cooper, Bulletin 461, Item 6; cf. Re Springob, Bulletin 451, Item 2; Re Schweinler, Bulletin 451, Item 11; Re Dall'Ava, Bulletin 451, Item 12; Re L. W. Johnson, Inc., Bulletin 453, Item 12.

As a violator of the Fair Trade regulations, the defendant-licensee must be punished. Re Cooper, supra. As a third offender that punishment must be substantial, both in order that the defendant, who does not seem to have profited by his two prior suspensions, may be impressed with the absolute necessity for scrupulous adherence to the Fair Trade regulations and that his punishment may serve as a deterrent and warning to other licensees.

Under the circumstances, I shall suspend his license for ninety days. Were I not satisfied that the instant violation was not a deliberate one, the suspension would be greater. See Re Maire, Bulletin 420, Item 8 (suspension for balance of term - totalling 316 days - for a third purposed sale below Fair Trade price). Were there evidence of a continuity of designed and flagrant disregard of the Fair Trade regulations, the license would be revoked outright. See Re Tarlow, Bulletin 436, Item 1.

Accordingly, it is, on this 3rd day of June, 1941,

ORDERED, that Plenary Retail Consumption License C-139, heretofore issued to Louis Seidman by the Municipal Board of Alcoholic Beverage Control of the City of Camden, be and the same is suspended until the end of its term, effective June 9, 1941, at 2:00 A.M. (Daylight Saving Time); and it is further

ORDERED, that no renewal or other license under the Alcoholic Beverage Law that may be issued to said Louis Seidman, or for the said premises, become effective prior to September 8, 1941, at 7:00 A.M. (Daylight Saving Time).

E. W. GARRETT,  
Acting Commissioner.

2. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENT IN APPLICATION FOR LICENSE - AIDING AND ABETTING A NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - CONCEALMENT OF CRIMINAL RECORD AND GROSS MISREPRESENTATIONS - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against )

ESTHER E. SMALLWOOD,  
N/E Boulevard and Oxford St., )  
Landis Township, )  
P.O. Vineland, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License No. C-9 issued by the Township Committee of the Township of Landis. )  
- - - - - )

Moe A. Joseph, Esq. and George H. Stanger, Esq., Attorneys for Defendant-Licensee.  
Robert R. Hendricks, Esq., Attorney for Department of Alcoholic Beverage Control.

The defendant, holder of a plenary retail consumption license for a tavern in Landis Township, pleads guilty to the charges (1) that she falsely denied in her application for license that anyone other than herself had interest in the tavern when in fact Silvio Santini had such an interest, contrary to R. S. 33:1-25, and (2) that she permitted Santini to exercise the rights and privileges of her license, contrary to R. S. 33:1-26, 52.

The fact is that the defendant has, since at least 1936, been obtaining and holding successive plenary retail consumption licenses for the tavern merely as a "front" for the said Santini.

Both the defendant and Santini now claim that, since institution of this proceeding, the defendant has completely bought out Santini's interest and is now sole and bona fide proprietor of the tavern, thus correcting the "front"; that the only reason for Santini's having operated the tavern under guise of such "front," instead of seeking and obtaining a license in his own name, was his belief that, being an Italian and not an American citizen, he was disqualified throughout from such license; that they did not know that, by reason of a one-time existing Italo-American treaty, Santini's lack of

American citizenship did not actually disqualify him from obtaining a liquor license until March 1939 (Re Woertendyke, Bulletin 504, Item 8).

However, it appears that Santini, in addition to being an Italian citizen (and hence disqualified since March 1939), actually has a criminal record; that, in fact, he was twice convicted in 1925 or 1926 for sale and possession of liquor at a "speak-easy" and served more than ten months in prison because of such convictions.

Although these convictions may not involve moral turpitude and hence not mandatorily disqualify Santini from holding a liquor license or working for a liquor licensee in New Jersey (R.S. 33:1-25, 26; Re Case No. 351, Bulletin 433, Item 2), nevertheless I conclude that Santini procured the defendant to "front" for him because he actually feared that such convictions, as well as his lack of American citizenship, might mandatorily disqualify him or might lead the local issuing authority to believe that in its judgment he was, because of such convictions, unfit for a license (Spitz v. Pemberton, Bulletin 379, Item 8).

The conclusion that Santini had such fear as to his criminal record is made well-nigh inescapable by the fact that he, when applying to this Department for an alien's employment permit to "work" at the tavern, specifically denied conviction of any liquor violation or other crime.

In view that this case thus involves a "front" for a person disqualified in point of citizenship from March 1939 and who also actually has a substantial criminal record; that this "front" was furthered by Santini's obtaining from this Department an employment permit on the false representation that he had no interest in any liquor license in New Jersey, was merely to be an employee at the tavern in question, and had no criminal record; that the defendant, the nominal licensee, actually aided in the entire illegality, not only by falsely representing herself to the local issuing authority as owner of the tavern but also by making a false plea to this Department that she could not, as owner of the tavern, "do all my work alone" and would, therefore, like to have an employment permit issued to Santini "to take care of the cleaning around the place"; and, further, that the evidence as to correction of the "front" is highly dubious; -- in view of all such facts, outright revocation of the defendant's license is the only proper penalty. Because of the aggravating circumstances in the case, nothing is gained by the guilty plea. Cf. Re Eagle Cafe, Bulletin 431, Item 10.

As to affiliate proceedings wherein Santini's employment permit is likewise revoked, see Re Santini, Bulletin 464, Item 3.

Accordingly, it is, on this 4th day of June, 1941,

ORDERED, that Plenary Retail Consumption License No. C-9, heretofore issued to Esther E. Smallwood for premises N/E Boulevard and Oxford Street, Landis Township, be and hereby is revoked, effective immediately.

E. W. GARRETT,  
Acting Commissioner.

3. DISCIPLINARY PROCEEDINGS - CONCEALMENT OF CRIMINAL RECORD - EMPLOYMENT PERMIT USED TO COVER PRESENCE OF TRUE OWNER ON PREMISES FOR WHICH LICENSE WAS HELD BY A FRONT - PERMIT REVOKED.

In the Matter of Disciplinary Proceedings against )

SILVIO SANTINI, N/E Boulevard and Oxford St., Landis Township, P.O. Vineland, N. J., )

CONCLUSIONS AND ORDER

Holder of Employment Permit No. 462, issued by the State Commissioner of Alcoholic Beverage Control. )

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Moe A. Joseph, Esq. and George H. Stanger, Esq., Attorneys for Defendant-Permittee. Robert R. Hendricks, Esq., Attorney for Department of Alcoholic Beverage Control.

The defendant is the holder of an employment permit from this Department to work in a limited capacity at liquor premises in this State despite his lack of American citizenship (or citizenship in a country having requisite reciprocal trade treaty with the United States).

He is here charged with and actually admits (1) denying in his application for such permit that he had ever been convicted of crime, contrary to R. S. 33:1-25; (2) denying in such application that he had ever been convicted of any liquor violation, contrary to R. S. 33:1-25; and (3) denying in such application that he had any interest in any liquor license in this state, contrary to R.S.33:1-25.

The facts are that Santini actually has a criminal record, having been twice convicted in 1925 or 1926 for possession and sale of liquor at a "speak-easy" and serving more than ten months in prison because of such convictions; that, since at least 1936, he has actually owned the tavern in Landis Township where he has nominally been working; that he procured Esther E. Smallwood to obtain and hold successive plenary retail consumption licenses for that tavern as a mere "front" for him.

Among other things, Santini seeks to claim that he did not really intend to falsify as to his criminal record; that he does not know English very well; that, when the person who filled out his application for him asked whether he had ever been convicted of any crime or any liquor violation, he (Santini) believed that this person was asking whether he was an American citizen.

I cannot put any stock in this incredible explanation, especially since the application contains a specific question inquiring about the applicant's nationality.

I find the defendant fully guilty as charged.

As to penalty: In view that Santini wholly abused his alien's employment permit by using it merely as a cover for being on the premises as an actual proprietor and that he falsified in his application for such permit by denying interest in the tavern and by

also denying his criminal record, revocation of his permit is the only fit penalty.

As to disciplinary proceedings against Esther E. Smallwood, nominal holder of the plenary retail consumption license for the tavern, see Re Smallwood, Bulletin 464, Item 2, revoking such license.

Accordingly, it is, on this 4th day of June, 1941,

ORDERED, that Employment Permit No. 462, heretofore issued to Silvio Santini by the State Commissioner of Alcoholic Beverage Control, be and hereby is revoked, effective immediately.

E. W. GARRETT,  
Acting Commissioner.

4. DISCRIMINATORY PRICES AND DISCOUNTS - REGULATIONS NO. 34 - GIFTS OF ALCOHOLIC BEVERAGES BY MANUFACTURERS OR WHOLESALERS TO HOLDERS OF SPECIAL SOCIAL AFFAIR PERMITS PERMISSIBLE.

June 4, 1941

Bundles for Britain, Inc.,  
East Orange, N. J.

Att: Edith Kluysheus

Dear Madam:

My records indicate that there has been issued to you Special Permit 6857, under which you are authorized to purchase alcoholic beverages from any licensed New Jersey retailer, wholesaler or manufacturer.

Prior to the promulgation of Regulations No. 34, wholesalers and manufacturers were allowed to make gifts of alcoholic beverages to such permittees since there were at that time no restrictions on the wholesale selling price.

Regulations No. 34, by its terms, prohibits discrimination in price between different retailers purchasing alcoholic beverages bearing the same brand name and of like age and quality. As to the holders of retail licenses, therefore, wholesalers and manufacturers may sell to them only at the prices duly filed, and may not make any gifts of liquor, except samples, to such licensees.

No reason presently appears why a special permittee should be considered a retail licensee within the meaning of those regulations. The evil sought to be remedied by the anti-discriminatory legislation, namely, that one licensee should not be given any unfair price advantage over another, is absent in the case of a permittee, since the latter cannot be considered to be in competition with a retail licensee.

In any event, until experience dictates that a contrary holding is desirable, I rule that Regulations No. 34 does not prevent a licensed New Jersey wholesaler or manufacturer from making free donations of alcoholic beverages to the holders of such special permits.

I hope your affair is a great success.

Very truly yours,  
E. W. GARRETT,  
Acting Commissioner.

5. DISCRIMINATORY PRICES AND DISCOUNTS - REGULATIONS NO. 34 - COMPUTATION OF CASE, FRACTIONAL CASE AND BOTTLE PRICES - FAILURE BY RETAILER TO PAY FULL PRICE COMPUTED IN ACCORDANCE WITH ESTABLISHED PRICE SCHEDULE MAY CONSTITUTE VIOLATION OF THE LAW.

June 6, 1941

Hudson-Bergen County Retail  
Liquor Stores Association,  
Union City, N. J.

Gentlemen:

Rule 1 of State Regulations No. 34 makes it compulsory that all wholesale price lists contain the bottle and standard case prices of each item. The case price need not be in direct proportion to the bottle price. A major reason why this is permitted is because of the consequent saving to the wholesaler in making the larger delivery and the greater facility in packaging and less danger of breakage. This saving may be passed on to the retailer.

If, therefore, less than the standard case of twelve bottles is sold, the price is based on the individual bottle price. If more than a case is sold, but less than two cases, the price for the excess over the single case is also based on the bottle price. This is because of the greater labor entailed in packaging and delivery, and the greater danger of breakage. The net result, therefore, where only bottle and full case prices are filed, is that case prices are available only in integral multiple case lots.

Where, pursuant to the option contained in the cited rule, half-case prices are also filed, a similar result follows. Thus, if six bottles are sold, the price therefor is the half-case price. If, however, nine bottles are sold, the excess of three bottles is priced at three times the single bottle price.

Further, if, in addition, quarter-case prices are filed, and nine bottles are sold, the price is the sum of the half-case and quarter-case prices. If, however, five or eight bottles are sold, the excess of two bottles over the quarter and half cases, respectively, is based upon the single bottle price.

Normally, the failure of a retailer to pay his liquor bills does not constitute any violation of the Alcoholic Beverage Law or Regulations. The wholesaler is left to his remedy in the civil courts and, if consistent with his price schedule and general business practice, he may also refuse to give any discount to a retailer in arrears.

Where, however, a retailer is billed in accordance with the foregoing, his refusal to pay because, in his opinion, the price is wrongly computed, may not be considered bona fide. Such refusal gives rise to the ready inference that it results from a deliberate attempt to circumvent the force and effect of the regulations and, if sufficiently aggravated circumstances appear, may be deemed a participation by the retailer, as well as the wholesaler, in a transaction deemed violative of the anti-discriminatory legislation (P.L. 1939, c. 87), which prohibits the grant of "any discount, rebate, free goods, allowance or other inducement over and above any discount, rebate, free goods, allowance or other inducement available to any other retailer."

The wise retailer will not look to any such lame excuse to support his refusal to honor an otherwise just debt. He will thereby save himself the liability to revocation or suspension of his license, as well as the necessity of defending any civil suit that may be brought by the wholesaler to enforce collection of the full amount due.

Very truly yours,  
E. W. GARRETT,  
Acting Commissioner.

6. MORAL TURPITUDE - BREAKING, ENTERING, LARCENY, BURGLARY AND RECEIVING STOLEN GOODS INVOLVE MORAL TURPITUDE.

DISCIPLINARY PROCEEDINGS - CONTUMACIOUS EMPLOYMENT ON LICENSED PREMISES OF PERSON DISQUALIFIED BECAUSE OF CONVICTIONS OF CRIMES INVOLVING MORAL TURPITUDE DESPITE INSTRUCTIONS TO STOP - TWO PRIOR DISSIMILAR OFFENSES - 22 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against  
ADAM PANASEVITZ,  
109 West Street,  
Newark, N. J.,  
Holder of Plenary Retail Consumption License C-268, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.  
-----)

CONCLUSIONS  
AND ORDER

Mario V. Farco, Esq., Attorney for Licensee.  
Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

Licensee pleaded non vult, with an explanation of the facts, to the following charges:

"1. Since on or about August 15, 1940, in violation of R. S. 33:1-26, you knowingly employed William Witney, a person who would fail to qualify as a licensee by reason of his conviction of the crimes of breaking and entering, larceny, burglary and receiving stolen goods, which crimes involve moral turpitude.

"2. Since on or about the date aforesaid, you allowed, permitted and suffered in and upon your licensed premises William Witney, a known criminal and person of ill repute, in violation of Rule 4 of State Regulations 20."

In 1933 William Witney was convicted on a charge of breaking, entering, larceny and burglary and placed on probation for two years. In November 1937 he was convicted on a charge of receiving stolen goods, placed on probation for two years and fined \$100.00. It has been held in numerous decisions by the Commissioner that each of these crimes involves moral turpitude.

On August 12, 1940, during the course of an investigation, police officers of the City of Newark found Witney tending bar at the licensed premises. They instructed him and the licensee to appear at the office of Deputy Chief Sebold. A few days later both appeared at the office of the Deputy Chief who, after discussing the matter with

them and obtaining signed statements, ordered and warned the licensee not to employ Witney in any capacity on his licensed premises and told Witney to keep out of the licensed premises.

On November 2, 1940 other police officers of the City of Newark again visited the licensed premises and found Witney tending bar.

At the hearing herein licensee testified that Witney married his daughter on August 11, 1940; that on November 2, 1940, licensee, because he was tired, requested Witney to take charge of the premises but not to serve anybody. However, the licensee admits, in other parts of his testimony, that after he had received the instructions from the Deputy Chief of Police he permitted Witney to tend bar occasionally and says that he did so because he could not afford to hire a bartender.

In his statement given to the Newark police on November 4, 1940, Witney admitted that he had helped tend bar at the licensed premises on Saturdays and Sundays during September 1940 and October 1940.

The violation herein appears to have been deliberate and continued over a period of more than two months. The fact that the bartender was the son-in-law of licensee does not, in any way, affect the seriousness of the violation.

As to penalty: In 1935 the Municipal Board of Alcoholic Beverage Control of the City of Newark found licensee guilty of keeping his premises open during prohibited hours but suspended sentence. On July 21, 1938 the Commissioner found the licensee guilty of selling alcoholic beverages to a minor and employing a hostess. As a result of this violation the license was suspended for one hundred and thirty (130) days (Re Panasevitz, Bulletin 262, Item 10), but on a petition for clemency the Commissioner afterward reduced the period of suspension to eighty (80) days (Bulletin 268, Item 11). Under the circumstances, I shall suspend the license which he now holds for the balance of the fiscal year.

Accordingly, it is, on this 6th day of June, 1941,

ORDERED, that Plenary Retail Consumption License C-268, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Adam Panasevitz, for premises at 109 West Street, Newark, be and the same is hereby suspended for the balance of the fiscal year ending June 30, 1941, effective June 9, 1941, at 3:00 A.M. (Daylight Saving Time).

E. W. GARRETT,  
Acting Commissioner.

7. DISCIPLINARY PROCEEDINGS - FRONTS - FALSE STATEMENTS IN APPLICATIONS FOR LICENSES - AIDING AND ABETTING A NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSES - FULL AND FRANK DISCLOSURE - RESIDENCE REQUIREMENT MET AND SITUATION CORRECTED - 20 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against GIBSON HOUSE, INC., Walnut Avenue, Clark Township, P.O. Rahway, R.F.D. 2, N. J., Holder of Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Clark.

CONCLUSIONS AND ORDER

Michael A. Santa Maria, Esq., Attorney for Licensee. Robert R. Hendricks, Esq., Attorney for State Department of Alcoholic Beverage Control.

Defendant-licensee has entered a plea of nolo contendere to charges alleging, in substance,

(1) that in an application dated December 14, 1940, for transfer of License C-7 from Robert Buzzee to itself, it falsely stated that no individual other than the stockholders therein set forth had any beneficial interest in the stock held by said stockholders, whereas in fact Jack Malaga, who was not named as a stockholder, had such an interest;

(2) that in an application filed June 8, 1940, Robert Buzzee, its predecessor in interest, falsely stated that no other individual had any interest in the license applied for, whereas in fact Jack Malaga had such an interest; and

(3) and (4) that defendant-licensee and Robert Buzzee, its predecessor in interest, from July 1, 1940 to April 29, 1941, knowingly aided and abetted Jack Malaga, a non-licensee, to exercise the rights and privileges of their respective licenses.

At the hearing it appeared that Jack Malaga became a resident of New Jersey on December 23, 1935 and has resided in this State since that time. It follows that on June 8, 1940 Malaga was not qualified to hold a retail license because at that time he had not been a resident of the State for at least five years. Malaga frankly admits that, on June 8, 1940, Robert Buzzee applied for a license and on July 1, 1940 obtained a license as a front for him. Thereafter, in November 1940, Gibson House, Inc. was incorporated. It issued twenty shares of stock; one share to Irving Engle, ten shares to Jack Regal and nine shares to Myer Alban. The license was subsequently transferred from Buzzee to Gibson House, Inc. Malaga frankly admits that the nine shares of stock originally issued in the name of Myer Alban were owned at all times by him.

On April 29, 1941 the shares standing in the name of Myer Alban were transferred on the books of the corporation to Jack Malaga, who, on said date, was qualified in so far as the residential requirements of the statute are concerned. Aside from the question of a conviction against Jack Malaga, hereinafter considered, the stockholders of Gibson House, Inc. now seem to be fully qualified.

The sole question concerns the penalty to be imposed.

If this were a case where Buzzee or the corporation licensee was used to permit a person disqualified because of a conviction involving moral turpitude to operate under the license, I would be inclined to revoke. Cf. Re Callari, Bulletin 411, Item 4; Re Eagle Cafe, Inc., Bulletin 431, Item 10. There is a single conviction against Jack Malaga in the State of Pennsylvania, in 1934, for selling alcoholic beverages during prohibited hours while a liquor licensee in that State. That crime, however, was not of such a serious character as to involve moral turpitude, and hence I find that Malaga is not disqualified by statute from holding a license because of that conviction. I shall accept as true his sworn testimony that he set up the respective fronts solely because of his lack of residential requirements. In imposing a penalty I am taking into consideration the plea entered, the fact that the two other stockholders appear to be bona fide holders of their respective shares of stock, and the further fact that Malaga is not fully qualified. In somewhat similar cases I have, in the past, imposed in effect a ten-day suspension because of a single false affidavit, but since this case involves two false affidavits, I shall suspend the license for twenty days.

Accordingly, it is, on this 6th day of June, 1941,

ORDERED, that Plenary Retail Consumption License C-7, heretofore transferred to Gibson House, Inc. by the Township Committee of the Township of Clark, be and the same is hereby suspended for a period of twenty (20) days, effective June 9, 1941, at 3:00 A. M. (D.S.T.).

E. W. GARRETT,  
Acting Commissioner.

- 8. DISCIPLINARY PROCEEDINGS - FRONT FOR NON-LICENSEE - SUSPENSION FOR BALANCE OF TERM, WITH LEAVE TO PETITION TO LIFT AFTER TEN DAYS IF SITUATION CORRECTED - 98 DAYS ELAPSED - PETITION TO LIFT GRANTED, CONDITIONED UPON TRANSFER OF LICENSE BY MUNICIPALITY.

In the Matter of Disciplinary Proceedings against  
CARL KASHEAD,  
T/a The Windmill,  
State Highway, at Collingswood Circle,  
Howell Township,  
P.O. Farmingdale, N. J.,  
Holder of Plenary Retail Consumption License C-13, issued by the Township Committee of Howell Township.

ON PETITION ORDER

M. Raymond McGowan, Esq., Attorney for Petitioner.

On February 24, 1941 I suspended defendant's license for the balance of its term after he had pleaded guilty to charges that he was a "front" for Walter Udeatzky. Leave was granted at that time to apply to me for lifting of said suspension, provided said license was transferred to a duly qualified person and provided further that said suspension would not be vacated prior to the expiration of ten days from the effective date thereof. Re Kashead, Bulletin 447, Item 2.

Petitioner herein, William A. Flick, has today filed with me a verified petition setting forth that he has leased the premises above described and applied to the Township Committee of the Township of Howell for transfer of License C-13 from Carl Kashead to himself; that he has complied with all statutory requirements as to said transfer and that his application is to be acted upon at a regular meeting of the Township Committee to be held on June 7, 1941. It appears from an affidavit of Elmer C. Hall, Township Clerk, that no objections have been filed to the transfer of the license and that so far as he is aware the Township Committee is satisfied as to the personal qualifications of petitioner, William A. Flick.

In view of the facts set forth in the verified petition and since ten days have elapsed since the suspension became effective,

It is, on this 6th day of June, 1941,

ORDERED, that the suspension heretofore imposed be lifted if and when the application of William A. Flick for transfer of said license is granted by the Township Committee of the Township of Howell.

E. W. GARRETT,  
Acting Commissioner.

9. SEIZURES - CONFISCATION PROCEEDINGS - WINE MANUFACTURED WITHOUT A LICENSE - WINE AND OTHER ALCOHOLIC BEVERAGES POSSESSED WITH INTENT TO SELL WITHOUT A LICENSE - ALCOHOLIC BEVERAGES FORFEITED.

In the Matter of the Seizure on ) Case No. 5927  
December 12, 1940 of approximately )  
three hundred gallons of home-made )  
wine, one hundred and five bottles of ) ON HEARING  
beer and five containers of other ) CONCLUSIONS AND ORDER  
alcoholic beverages, at 136 South Day )  
Street, in the City of Orange, County )  
of Essex and State of New Jersey. )  
- - - - - )

Joseph C. Cassini, Esq., Attorney for Italian-American Citizens League of Orange.  
Harry Castelbaum, Esq., Attorney for the State Department of Alcoholic Beverage Control.

On December 12, 1940 investigators of this Department, accompanied by police officers of the City of Orange, entered the quarters of the Italian-American Citizens League at 136 South Day Street, Orange, in order to investigate a complaint that wine was being manufactured, without license or permit, at that address.

In a bin in the rear of the club premises the officers found and seized some 310 gallons of home-made wine. Several quarts of whiskey, a small quantity of vermouth, 105 bottles of beer (including several bottles on ice) and six or seven one-gallon jugs of wine, found in a side room in which was located a service bar, were likewise seized.

The League, while admitting that it had manufactured the wine on the premises and without license or permit, maintains that the wine was intended for the personal and gratuitous consumption of club members and seeks its return on the ground that it had acted in good faith and with full intention of applying to this Department for a permit.

Where there had been an unlicensed manufacture of wine by a club, in good faith and in ignorance of the law, and such wine had been manufactured for personal consumption as distinguished from contemplated sale, the club was afforded an opportunity to reclaim the seized wine upon obtaining a special permit. Re Seizure Cases No. 5665, 5666, Bulletin 393, Item 11.

In the present case, however, the evidence leads me to believe that all the wine and the other seized alcoholic beverages were possessed with intent to sell without license. Several ledgers in which entries were made by a trustee of the association were found on the premises. These ledgers, covering a period from June 10, 1940 to December 2, 1940, show that substantial amounts were expended weekly for purchases of beer; that cash was received for beer, vermouth and wine, and cash, averaging \$66.00 per week, paid over to the financial secretary of the League, apparently representing the net profit on the sales of candy, cigarettes, soft drinks and alcoholic beverages.

By way of attempted explanation, the trustee of the League testified that the alcoholic beverages were purchased by him with money donated by various members; that the alcoholic beverages were dispensed free of charge to the club members at their frequent "parties" held in the clubroom; that he kept the elaborate and detailed bookkeeping account shown in the ledgers merely for his own benefit so that he would know when to ask the League for more money to buy more stock. As indicated above, the entries in the ledgers do not support his testimony but indicate rather that a substantial business of buying alcoholic beverages and selling the same to members was carried on by the League. The financial secretary did not appear at the hearing.

I am convinced that the League was engaged in the sale without license of alcoholic beverages.

The wine, having been manufactured without license and permit, is illicit. R. S. 33:1-1(i). The wine and also all the other alcoholic beverages seized on the premises are illicit because possessed with intent to sell without proper license. R.S. 33:1-1(i).

I find that all the seized property constitutes unlawful property. R. S. 33:1-1(y), 66. Under the circumstances, no special permit will be issued but the seized property will be forfeited.

Accordingly, it is ORDERED that the seized property, more fully described in Schedule "A", annexed hereto, be and the same is hereby forfeited in accordance with the provisions of R. S. 33:1-66, 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 Commissioner.

E. W. GARRETT,  
Acting Commissioner.

Dated: June 6, 1941.

SCHEDULE "A"

- 6 - 50-gallon barrels of wine
- 2 - 5-gallon demijohns of wine
- 7 - 1-gallon jugs of wine
- 91 - quart bottles of beer
- 14 - 12-ounce bottles of beer
- 3 - bottles of vermouth
- 2 - 1/2-gallon bottles of Seagram's Whiskey

10. ELIGIBILITY - POSSESSION AND SALE OF ILLICIT ALCOHOLIC BEVERAGES SINCE REPEAL - AGGRAVATING CIRCUMSTANCES - MORAL TURPITUDE - APPLICANT DECLARED INELIGIBLE TO HOLD A LIQUOR LICENSE OR BE EMPLOYED BY A LIQUOR LICENSEE.

June 6, 1941.

Re: Case No. 383

In 1934 applicant was arrested for an alleged violation of the Alcoholic Beverage Control Law, which charge was dismissed by the Grand Jury.

In 1937 she was convicted of possessing lottery slips and fined \$50.00.

In 1938 she was convicted on one charge of possession and two charges of sale of illicit alcoholic beverages. She was fined \$150.00 for possession, fined \$100.00 on one charge of sale and placed on probation for two years after receiving a suspended sentence to Clinton Reformatory on the remaining charge.

In 1940 she was arrested for violating the terms of her probation, which was then extended for an additional two years.

The Alcoholic Beverage Law prohibits any one convicted of a crime involving moral turpitude from being employed in any capacity by a liquor licensee or from obtaining any liquor license in New Jersey. R. S. 33:1-25, 26.

While a single instance of possession or sale of alcoholic beverages in violation of the Alcoholic Beverage Law does not per se constitute a crime involving moral turpitude (Cf. Case No. 367, Bulletin 447, Item 7; Re Case No. 371, Bulletin 453, Item 6), that element may be present where there are aggravating circumstances. Re Case No. 273, Bulletin 318, Item 9.

In the instant case, the scene of applicant's arrests was a stationery store. According to her story, she and her husband were the owners of this store from 1929 until 1934; thereafter, they sold the store to her brother; her husband opened a licensed tavern a few doors away and she continued to frequent the stationery store and help serve its patrons. In 1935 her brother was arrested and eventually convicted of illegal liquor activities at the premises; from some time in 1937 until the spring of 1938, while her brother was in prison on some charge, she and her sister-in-law managed the business. It was during the latter part of this period that she was observed repeatedly making unlicensed sales of drinks and bottles of alcoholic beverages, which led to her arrest and conviction.

In fixing the terms of her probation, the Probation Office evidently thought her continued association with the store was undesirable and ordered her to stay away therefrom. Her 1940 arrest was for an alleged violation of this condition. Her version of the affair is that as an accommodation to an acquaintance, she purchased a bottle of whiskey for him in her husband's tavern. However, the Probation Office reports that she was arrested because she returned to the store.

In view of these facts, it is reasonable to conclude that "speakeasy" activities were carried on in the store for a long period; that applicant's activities in connection therewith were not casual,

but, on the contrary, show a persistent course of misconduct. Her offense is further aggravated by the fact that she claims that the liquor sold by her in the stationery store was obtained from her husband's tavern. Without obtaining a license, she was evidently operating in the stationery store a branch of her husband's licensed business.

The background of applicant's conviction, as thus developed, shows that she is utterly lacking in regard for law and order and that she has but little conception of the ethics which should govern the actions of those seeking to engage in the liquor business since repeal. These aggravating circumstances indicate a "bent of mind - an abtuseness 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. I believe that the crimes of which she was convicted in 1938 involve moral turpitude.

In view of this conclusion, it is not necessary to consider whether her conviction for possessing lottery slips involves moral turpitude.

It is, therefore, recommended that applicant be advised that she is ineligible to hold a liquor license or be employed by a liquor licensee of this State by reason of her conviction in 1938.

Harry Castelbaum,  
Attorney.

APPROVED:  
E. W. GARRETT,  
Acting Commissioner.

- 11. DISCIPLINARY PROCEEDINGS - SALE OF DELICATESSEN ON CONSUMPTION PREMISES - SUSPENSION FOR BALANCE OF TERM, WITH LEAVE TO PETITION TO LIFT AFTER THIRTY DAYS IF SITUATION CORRECTED - ALTERATIONS MADE AND LICENSED PREMISES REDEFINED - PETITION TO LIFT GRANTED, EFFECTIVE UPON THE EXPIRATION OF THE 30 DAYS.

In the Matter of Disciplinary Proceedings against  
  
HELEN SCHEY,  
288 Madison Ave.,  
Perth Amboy, N. J.,  
  
Holder of Plenary Retail Consumption License C-105 issued by the Board of Commissioners of the City of Perth Amboy.

ORDER

On May 8, 1941 I suspended the defendant's license, effective May 12, 1941, for the balance of its term, after she had pleaded guilty to charges that she sold delicatessen for off-premises consumption in violation of special rulings made by the Acting State Commissioner in letters addressed to her dated December 20, 1940 and January 17, 1941. The order of suspension provided that the suspension would be lifted if it satisfactorily appeared, on petition and proper corroborative Department investigation, that the situation had been fully corrected, provided, however, that in no event would said suspension be lifted prior to the expiration of thirty days from the effective date thereof. Re Schey, Bulletin 458, Item 7.

Pursuant to said provision, the licensee informed this Department that the situation had been corrected. Accordingly, Department investigation was made, from which it appears that the specific alterations which satisfy the statutory requirement of a separation of the defendant's delicatessen business from the liquor business have been effected in accordance with the Conclusions heretofore entered. Re Schey, supra. Certification has also been received from the City Clerk of Perth Amboy that the change in the licensed premises has been made by the licensee and approved by the Board of Commissioners of the City of Perth Amboy in accordance with Re Daly, Bulletin 171, Item 3.

Thirty days of the suspension heretofore entered will expire on June 11, 1941, at 7:00 A.M. (E.S.T.).

Accordingly, it is, on this 9th day of June, 1941,

ORDERED, that the suspension heretofore imposed be lifted, and that Plenary Retail Consumption License C-105, heretofore issued to Helen Schey by the Board of Commissioners of the City of Perth Amboy, be and the same is hereby restored to full force and operation, effective June 11, 1941, at 7:00 A.M. (E.S.T.).

*E. W. Garnett*

Acting Commissioner.