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

BULLETIN 573 JUNE 18, 1943.

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

BULLETIN 573 JUNE 18, 1943.

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| In the Matter of Disciplinary Proceedings against<br><br>ROMEO DI LUIGI<br>t/a ATLANTIC BOTTLING WORKS<br>211-13 North Massachusetts Ave.<br>Atlantic City, New Jersey<br><br>Holder of State Beverage Distributor's License No. 204, issued by the State Commissioner of Alcoholic Beverage Control. | CONCLUSIONS AND ORDER |

Jacob S. Glickenhaus, Esq., Attorney for Defendant-Licensee.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to the following charges:

"1. From about March 7, 1942, to November 9, 1942, and on divers days prior thereto, you sold and distributed malt alcoholic beverages to Florence A. Conroy and Thomas A. Conroy and the Owl Social and Professional Club of Atlantic City, New Jersey, for the purpose of resale and not for consumption by the said Florence A. Conroy and Thomas A. Conroy and the said Owl Social and Professional Club, in violation of R. S. 33:1-11 (2c).

"2. At the times aforesaid, you delivered to Florence A. Conroy and Thomas A. Conroy and the Owl Social and Professional Club of Atlantic City, New Jersey, persons not holding a license under the Alcoholic Beverage Law, malt alcoholic beverages intended by such persons for delivery, by gift or otherwise, to customers or prospective customers in the course of their business, in violation of Rule 12, of State Regulations No. 20."

The charges concern the sale and delivery of beer by defendant to the Owl Social and Professional Club of Atlantic City. Apparently this club was organized for social and welfare purposes in 1937 or 1938, and has been in existence until recently. There is testimony that at one time the club had 450 members. The membership dwindled away. However, it appears from the evidence that, at least in the beginning, the club was a bona fide organization. Almost from the date of its organization the club held weekly dances which, until October 1942, were attended by members of the club and their bona fide guests. The members who attended these dances paid "weekly dues" amounting to 50¢, and their guests also were required to pay 50¢. Sandwiches, soft drinks and beer were served, without charge, to the members and their guests. Since an admission fee was

charged, the alcoholic beverages were not actually given away gratuitously and, hence, the Owl Club, which never held a liquor license, required a special permit from this Department for each weekly affair. Re Dworkin, Bulletin 53, Item 12. It appears that the Owl Club did not obtain special permits except on one occasion when the affair was open to the general public. Despite this fact, however, the defendant should not be held responsible unless he had reason to believe that the alcoholic beverages were intended to be resold, as aforesaid, and not given away gratuitously to the members of the club or their bona fide guests.

Defendant testified that he sold quarter-barrels and half-barrels of beer to the Owl Club during each week-end from July 1940 to November 9, 1942, and that at no time did he have any personal knowledge that an admission fee was being charged to the dances. Emelio Angeletti, a solicitor for the licensee, became a member of the Owl Club in July 1940, and attended two dances during the summer of 1940. He testified that he has not attended any of the weekly affairs conducted by the club since that time. Angeletti was not an officer or director of the club. He said that he paid $1.00 dues in 1940 and that he saw other persons pay money which he presumed was also in payment of dues. Even if the knowledge of Angeletti can be imputed to the defendant, the evidence falls far short of showing that defendant, or his agent, had knowledge that the beer was intended to be resold by the club. Hence I conclude that the Department has failed to sustain the burden of proof as to the guilt of defendant. I shall dismiss the charges.

In passing, it may be noted that, at some time in October 1942, the method of operation was changed. Thereafter, Florence A. Conroy and Thomas A. Conroy appear to have supplanted the officers of the Owl Club. Some time thereafter they began to admit the general public to the weekly dances upon payment of an admission fee of 75¢. On February 6, 1943, they were arrested for selling alcoholic beverages without a license after they had admitted to the club premises approximately one hundred soldiers and fifty civilians who had paid the required entrance fee and who were being served with free beer. However, defendant had ceased serving beer to the Owl Club nearly three months before this bold violation of the Alcoholic Beverage Law occurred. There is no evidence that defendant, or his agent, knew of or acquiesced in the unlawful activities of the Conroys.

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

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

ALFRED E. DRISCOLL,
Commissioner.

2. DISCIPLINARY PROCEEDINGS - CHARGE OF SELLING ALCOHOLIC BEVERAGES IN VIOLATION OF R. S. 33:1-11 (2c) AND RULE 12 OF STATE REGULATIONS NO. 20 DISMISSED - DEPARTMENT FAILED TO SUSTAIN BURDEN OF PROOF.

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| In the Matter of Disciplinary Proceedings against<br><br>ABRAHAM G. WALDEN<br>t/a Stanley Supply Co.<br>3707 Sunset Avenue<br>Atlantic City, N. J.<br><br>Holder of State Beverage Distributor's License No. 121, issued by the State Commissioner of Alcoholic Beverage Control. | CONCLUSIONS AND ORDER |

Jacob S. Glickenhaus, Esq., Attorney for Defendant-Licensee.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleaded not guilty to a charge of selling and distributing malt alcoholic beverages, outside of and beyond the limits of his license, in violation of R. S. 33:1-11 (2c) and Rule 12, Regulations No. 20.

The charges herein grew out of sales to the Owl Social and Professional Club. See Re DiLuigi, Bulletin 573, Item 1. Walden started selling the Owl Social and Professional Club when Mr. DiLuigi stopped and served them briefly, about ten or twelve weeks, until February 6, 1943 at which time, having read in the newspaper that the Owl Social and Professional Club had been raided for selling beer without a license, he refused to sell it.

I can find nothing in the evidence that would warrant a conclusion that Mr. Walden knew or should have known of the illegal practice of selling beer (paid for by the admission charge) indulged in by the Owl Social and Professional Club.

I am presently of the opinion that the licensee in the absence of a reasonable suspicion is not obliged to conduct an investigation as to the final destination of his merchandise. I conclude that the Department has failed to substantiate its charge and find the defendant not guilty.

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

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

ALFRED E. DRISCOLL,
Commissioner.

3. DISCIPLINARY PROCEEDINGS - CHARGE OF SELLING ALCOHOLIC BEVERAGES IN VIOLATION OF R. S. 33:1-11 (2c) AND RULE 12 OF STATE REGULATIONS NO. 20 DISMISSED - DEPARTMENT FAILED TO SUSTAIN BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against

JOSEPH POLISANO
t/a Seashore Liquor Store
2329-31 Atlantic Avenue
Atlantic City, N. J.,

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

CONCLUSIONS AND ORDER

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Joseph Polisano, Pro se.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control

BY THE COMMISSIONER:

The licensee pleaded not guilty to charges of selling for resale, as defined by the Department in Rule 12 of State Regulations No. 20.

These charges grew out of sales to the Owl Social and Professional Club. Re DiLuigi, Bulletin 573, Item 1; Re Walden, Bulletin 573, Item 2. In this case, as distinguished from the aforesaid, the licensee is the holder of a Plenary Retail Distribution License, the sales were at retail, not periodic, but limited to about four sporadic sales over a period of two years.

The facts show that Mr. Polisano had no knowledge of the illegal practice of the Owl Social and Professional Club of selling the beer (paid for by the admission charge), nor did he even have knowledge that the club met regularly, once a week. His sales seem to have been made only on the club's underestimation of their demand.

I am forced to the conclusion that the Department has failed to substantiate the charge and find the defendant not guilty.

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

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

ALFRED E. DRISCOLL,
Commissioner.

4. APPELLATE DECISIONS - CENTRAL NORFOLK TAVERN, INC. v. NEWARK.

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| CENTRAL NORFOLK TAVERN, INC., Appellant, | ) | On Appeal |
| -vs- | ) | CONCLUSIONS AND ORDER |
| MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, Respondent. | ) | |

Sidney Simandl, Esq., Attorney for Appellant.
Louis A. Fast, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the determination of the Municipal Board of Alcoholic Beverage Control of the City of Newark by Cental Norfolk Tavern, Inc., a corporation, holder of plenary retail consumption license C-769 for premises known as 258 Washington Street, Newark.

The appellant herein was adjudged guilty of violating R. S. 33:1-77 and Rule 1 of State Regulations No. 20 by the Municipal Board because, on or about December 21, 1942, one of its employees sold beer to Eileen G----, a minor, or permitted her to consume beer on the licensed premises.

Charles Frisch, bartender and manager of the tavern, testified that Eileen G---- entered the licensed premises on the evening in question. He stated that he saw her talking to another young lady and two men who were seated at a table. He denied that any beer was served to Eileen G---- or to the others seated at the table subsequent to the girl's arrival at the tavern.

Eileen G---- stated that she was fourteen years of age. This was corroborated by a birth certificate admitted in evidence, Exhibit R-1. She testified that she entered the tavern about half past twelve and stood looking out of the door for two or three minutes. At the invitation of Frances, known as "Mickey", she joined her and two male companions at a table. Thereupon, she stated, one of the men, Haney, went to the bar and purchased beer. Eileen testified she consumed one glass of beer then and had three glasses thereafter. She stated "I will say I had about four -- I am not sure." She admitted, under cross-examination, that she had not slept in seventy-two hours prior to the time she visited the licensed premises on the night in question.

Robert Griffith of the Newark Detective Bureau testified that Policewomen Knapp and Bermbom, and Eileen G---- accompanied him to the licensed premises on December 22, 1942. He spoke to Charles Frisch concerning Eileen in the presence of the aforementioned persons. Dectective Griffith said he questioned the bartender Charles Frisch as follows:

"Q Do you know Eileen G----, this girl?
A No.

"Q Did you ever see her before?
A Yes, she was in here last night. I waited upon her or I served her.
Q What did she have?
A A few beers.
Q Do you know this girl is under age?
A Do you mean to tell me she is not old enough?
Frisch turned to Eileen and said: 'Now, you are making trouble for me' or 'Are you trying to make trouble for me?'"

Detective Griffith further stated that Eileen identified Frances Zelahi, who stood at the end of the bar, as "Mickey", with whom she was seated at the table the previous night. The detective thereupon asked Frances whether she was drinking with Eileen, and Frances answered, "Yes, we had four beers." All of this conversation, Detective Griffith testified, took place in the presence of Frisch, Eileen and the two policewomen. It was stipulated by agreement of counsel for both parties that the testimony of Policewomen Knapp and Bermbom would be similar to that of Detective Griffith.

At the hearing herein, three witnesses who did not testify at the hearing before the Municipal Board, testified on behalf of appellant. These witnesses, Kenneth Haney, Jerry Jones and William Stucky, denied that beer was served to or consumed by the minor on the licensed premises on the evening in question. The testimony reveals, however, that the three witnesses had left the tavern while Eileen was still on the licensed premises. Parts of the testimony of Eileen appear to be somewhat inconsistent to that given at the former trial before the Municipal Board. Nevertheless, it is sufficiently apparent, from the testimony given by Eileen, that she was served beer during her visit to the tavern. Even though I may not be inclined to give too great weight to the testimony of Eileen, I am very much impressed with the testimony of Detective Griffith which has been substantiated by the testimony of Policewomen Knapp and Bermbom. The admission of Charles Frisch, bartender and manager of defendant's tavern, to the detective and policewomen when confronted with accusation of selling alcoholic beverages to Eileen G----, together with other testimony adduced, is sufficient to sustain the determination of the Municipal Board. The penalty imposed in this particular case by the respondent was exceptionally lenient. Due to Eileen being only fourteen years of age, it appears to me that this was an aggravating factor which should have been taken into consideration. See Re Zokas, Bulletin 446, Item 10.

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

ORDERED that the petition of appeal be and the same is hereby dismissed; and it is further

ORDERED that the ten-day suspension heretofore imposed against appellant's license by respondent, and held in abeyance pending disposition of this appeal, is hereby restored, to commence at 2:00 A.M. June 17, 1943 and to terminate at 2:00 A. M. June 27, 1943.

ALFRED E. DRISCOLL,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - LICENSEE FILED FALSE AND MISLEADING TAX REPORTS - 20 DAYS' SUSPENSION.

In the Matter of Disciplinary )
Proceedings against )
SARAH MILLER, )
t/a WASHINGTON LIQUOR STORE, ) CONCLUSIONS
477 Washington Avenue ) AND
Belleville, New Jersey, ) ORDER
Holder of Plenary Retail Distri- )
bution License D-1 issued by the )
Board of Commissioners of the )
Town of Belleville. )

Harold Simandl, Esq., Attorney for Defendant-licensee.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The following charge was served upon the defendant-licensee:

> "You failed, in violation of R. S. 54:45-1 and R. S. 54:47-3, to file with the State Tax Commissioner requisite reports disclosing the alcoholic beverages stored, purchased and sold by you during the months of May to October, 1942, both inclusive, in that you filed for these months false reports of said storage, purchases and sales."

R. S. 54:45-1 requires defendant to file with the State Tax Commissioner, on or before the 20th day of each month, a report, under oath, which shall disclose the amount of alcoholic beverages stored, withdrawn from storage, purchased and sold by the defendant during the preceding month.

R. S. 54:47-3 provides that any person who shall file with the State Tax Commissioner any false or fraudulent report or statement with the intent to defraud the State or evade the payment of any tax, penalty or interest, or any part thereof which shall be due, pursuant to the provisions of Title 54, subtitle 8 of the Revised Statutes, shall be guilty of a misdemeanor.

R. S. 33:1-31 provides that the Commissioner of Alcoholic Beverage Control may suspend or revoke a license for various causes including failure to comply with any of the provisions of subtitle 8 of the title Taxation (§54:41-1 et seq.).

By stipulation of counsel, the record herein includes the evidence which was presented in a seizure hearing involving a large quantity of alcoholic beverages which had been found in defendant's home. See Bulletin 544, Item 6. The evidence discloses, and the licensee admits, that during the period between May 1942 and October 1942 it was her regular practice to interchange large quantities of alcoholic beverages between the licensed premises and her home. Such alcoholic beverages were ostensibly sold to her husband, taken to the licensee's home and there stored. Thereafter, as the need arose, various quantities of these alcoholic beverages were from time to time returned to the licensed premises and there sold. Other alcoholic

beverages were then taken from the store to her home under a similar arrangement. The large quantities involved negative the possibility that such alcoholic beverages actually were intended for personal consumption. Hence, the licensee, during the period of May 1942 to October 1942, filed false reports with the State Tax Commissioner with respect to the amount of alcoholic beverages stored and sold by her during these respective months, in that such reports included the fictitious sales to her husband and did not correctly set forth the amount of alcoholic beverages actually sold, nor correctly set forth the amount of alcoholic beverages actually stored by the licensee.

It is to be noted that even if the licensee had made bona fide sales of alcoholic beverages to her husband, for his personal consumption, her repurchase of such alcoholic beverages from him (aside from the fact that such purchases were illegal, in that a retail licensee can only purchase liquor for resale from a licensed wholesaler) would have to be included in her monthly reports as alcoholic beverages purchased for resale at her licensed premises. Her tax reports did not include these items.

The procedure outlined above was apparently part of a general plan to escape payment of an additional Federal floor tax upon the large quantity of alcoholic beverages which were stored in her home, but which normally should have been stored upon the licensed premises.

At the outset of the disciplinary hearing, counsel for the licensee moved to dismiss the charge. Apparently the motion is based upon the contention that, since Mrs. Miller filed monthly reports with the State Tax Department as required by R. S. 54:45-1, she complied with the statutory mandate even if the reports contained false statements as to purchases, sales and storage of alcoholic beverages. I find no merit to this contention. The purpose of requiring such monthly reports is to afford the State Tax Commissioner true information from which he can determine the amount of liquor taxes which are due to the State. It is no answer to say that the State has not been defrauded of any taxes. The fact remains that the various reports were false and, hence, I find that defendant, for the months mentioned herein, has failed to file reports disclosing the amount of alcoholic beverages stored, withdrawn from storage, purchased and sold by her during the preceding month.

The motion apparently is also based upon the contention that R. S. 54:47-3 does not specifically provide that the filing of a false report shall subject a license to disciplinary proceedings. It is true that the section does not refer to the license, but provides that the person who files a false report shall be guilty of a misdemeanor. However, an act which renders a licensee subject to criminal proceedings may also be the basis of independent disciplinary proceedings against the license. The motion to dismiss the charge is denied.

After carefully considering all the evidence, I find the licensee guilty as charged.

As to penalty: After the seizure referred to herein, defendant paid the Federal floor tax which was due upon the seized liquor. The seized liquor was returned to the licensee after she paid to this Department the sum of $1,000.00, which was fixed as the fee for special permits to validate the unlicensed storage of the alcoholic beverages in her home. Licensee, who has no previous record, has thus been severely punished for her unsuccessful attempt to evade the payment of the Federal floor tax. Under all the circumstances, I shall suspend her license for a period of twenty days. I consider this a

serious violation and shall impose a more severe penalty for any future violation of this nature committed by licensees.

Since there are not sufficient days left in the current licensing year (which ends June 30, 1943) for the twenty-day suspension to be served, I shall suspend the defendant's present license for the balance of its term and shall direct that any license issued to the defendant, or anyone else, for the premises in question for 1943-44 be under suspension until the full period of twenty days has elapsed.

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

ORDERED, that Plenary Retail Distribution License D-1, heretofore issued by the Board of Commissioners of the Town of Belleville to Sarah Miller, t/a Washington Liquor Store, for premises 477 Washington Avenue, Belleville, be and the same is hereby suspended for the balance of its term, effective June 21, 1943, at 2:00 A.M.; and it is further

ORDERED, that if any license be issued to this licensee, or other person, for the premises in question, for the 1943-44 fiscal year, such license shall be under suspension until 1:00 P.M. July 11, 1943.

ALFRED E. DRISCOLL,
Commissioner

6. APPELLATE DECISIONS - THE HOTEL MACON, INC. v. WILDWOOD.

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| THE HOTEL MACON, INC., a corporation of the State of New Jersey, | ) | |
| Appellant, | ) | On Appeal |
| -vs- | ) | CONCLUSIONS AND ORDER |
| BOARD OF COMMISSIONERS OF THE CITY OF WILDWOOD, | ) | |
| Respondent. | ) | |

T. Millet Hand, Esq., Attorney for Appellant.
Harry Tenenbaum, Esq., Attorney for Respondent, and Objectors.

BY THE COMMISSIONER:

Respondent denied appellant's application for a transfer of a plenary retail consumption license held by Anthony Campanaro for premises on the northwest corner of Atlantic and Spicer Avenues to itself for premises operated as a hotel at 315 East Wildwood Avenue. Hence this appeal.

Among other reasons, respondent denied the application because, in its opinion, there was no public need for a consumption license at appellant's premises, and also because the residents in the vicinity were opposed to it.

The Hotel Macon is located in a zoning area restricted to three or more family dwellings and hotels. No commercial business

buildings are located or permitted in this area. Many of the owners of the apartment and boarding houses on East Wildwood Avenue between Atlantic Avenue and the boardwalk, where the Hotel Macon is situated, and also those owning similar properties on East Pine Street, the next parallel street to the north, appeared at the hearing and strenuously protested against the issuance of a liquor license to the appellant. Their objections were based upon the lack of any need for an additional license in that vicinity and the fact that their rentals would be seriously curtailed if appellant's application were granted.

The appellant, upon whom rests the burden of demonstrating that public necessity and convenience require that a liquor license be issued to it for its premises, produced only its president as a witness on its behalf. The testimony of this sole witness was barren of any evidence indicating any necessity for the hotel to be licensed so far as the persons residing in the vicinity were concerned. In this connection, the record shows that a consumption license is presently outstanding for premises near the southwest corner of Atlantic and East Wildwood Avenues, about 250 feet distant from appellant's hotel.

The testimony of appellant's president, on the issue of public necessity and convenience, was limited to an attempt to show that a liquor license was an essential adjunct for the successful operation of the hotel and for the convenience of the hotel guests. She stated that she had purchased the property in December 1941 and personally operated the hotel during the summer season of 1942. She did not, however, serve any food at the hotel during that period. She then said: "When I opened up last year I had an elderly class of people and they would say it would be nice if they could get a sandwich and a glass of beer, and that is where I got my idea (to apply for the license)."

This evidence falls far short of meeting the test of public necessity and convenience as laid down in ~~Ignatz~~ v. ~~Phillipsburg~~, Bulletin ~~167~~ 184, Item ~~16~~ 1, where it was said:

> "***While hotels are distinguishable from ordinary drinking places and are not to be discriminated against in the issuance of licenses; see cases supra; also Retail Liquor Dealers Association vs. Plainfield, Bulletin #70, Item 1 and Peck vs. West Orange, Bulletin #147, Item 1; nevertheless it does not follow that a hotel is ipso facto entitled to a license just because it is a hotel. There is no 'must' in the Control Act which provides that all hotels are entitled as of right to a liquor license. The test is public necessity and convenience, not whether a given place is a hotel or not."

See also Lincoln Avenue Corporation v. Wildwood, Bulletin 540, Item 2, where I approved the language of the ~~Ignatz~~ case.

In the case of The Casablanca Company v. Wildwood, decided today (Bulletin 572, Item 13), I pointed out that a transfer of a liquor license is merely a privilege, and not a right inherent in the license. I further stated that, with certain exceptions not there or here material, such privilege is no greater than that involved in the original issuance of a liquor license, and cited the language of Justice Parker in Bumball v. Burnett, 115 N.J.L. 254 (Sup. Ct.), where he said (at p. 255):

"Prosecutor argues apparently that a liquor license is to be obtained and is obtainable on the same theory as a license to carry on, say a grocery business, demandable by any respectable citizen on payment of the prescribed fee: but that is not the case. 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. '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 of the United States.' Meehan v. Board, 29 N. J. L. J. 370; 64 Atl. Rep. 689. See, also, Hagan v. Boonton, 62 N. J. L. 150."

It is to be noted that the record discloses that the Hotel Macon was built about 18 years ago and has never been licensed for the sale of alcoholic beverages.

It further appears that between 150 and 200 soldiers are quartered continuously at the Davis Hotel, located on Atlantic Avenue, about 250 feet from the Hotel Macon. The Mayor of the respondent municipality testified that the proximity of these soldiers to the premises in question also constituted a sufficient justification for its decision in refusing to license an additional place in this area. I must agree. Cf. Lehn v. Caldwell, Bulletin 560, Item 7.

I find no abuse of discretion in respondent's denial of appellant's application and, therefore, shall affirm such action.

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

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

ALFRED E. DRISCOLL,
Commissioner.

7. APPELLATE DECISIONS - THEBERY v. NORTH BERGEN AND SCHARMBERG.

AUDNA THEBERY,

Appellant,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE TOWNSHIP OF NORTH BERGEN AND DORIS SCHARMBERG,

Respondents.

On Appeal

CONCLUSIONS AND ORDER

Wilbur L. Ross, Esq., and John J. Meehan, Esq., Attorneys for Appellant.

Nicholas S. Schloeder, Esq., Attorney for Respondent, Municipal Board of Alcoholic Beverage Control of the Township of North Bergen.

BY THE COMMISSIONER:

This is an appeal from respondent's refusal to grant to

appellant a transfer of a plenary retail consumption license held by Doris Scharmberg for premises 9266 Hudson Boulevard, North Bergen.

The respondent alleges that it denied the application "in the exercise of its discretion and in the interest of public welfare." Respondent asserts that the application for transfer was not made in good faith, that the applicant is a "front" for someone else "especially some members of her family", and that the granting of the application would lead to the use of the licensed premises by appellant's brotners who are alleged to have police records and to have been associated with professional gambling activities.

Appellant resides with her mother and father. Her husband is presently a member of the armed forces of this country. Appellant's two brothers have police records. Following an investigation of the application by the local police, respondent conducted a hearing. At this hearing it was developed that appellant is employed as a telephone operator in her father's taxicab business and has never had any experience with the restaurant or liquor business. From the testimony it appears that she knew little or nothing concerning the details of the purchase of the license and business from Doris Scharmberg, the present owner. Appellant was hazy about the amount of the purchase price or the method of payment. Although she had visited the tavern on three occasions, she had never been behind the bar. She was unaware of the type of refrigeration used at the tavern and in fact stated that she didn't know whether "they used ice or refrigeration". She had never inspected the cellar and did not know whether there was a cooling system. When she was asked what employees she intended to use at the premises, she replied "I hadn't thought of it yet". She gave the same response on one occasion when asked whether her brothers or father would be employed on the premises.

From her testimony it appears that she met with the present owner on only one occasion. This meeting took place at the office of appellant's attorney. The latter testified, however, that the "price had been agreed on before I entered the picture". Who, then, agreed upon the price? Apparently neither the appellant nor her attorney determined the price to be paid by appellant for the business.

A police sergeant testified that when the application was filed he instituted an investigation and was told by appellant that none of the members of her family were connected in any way with the application. On several occasions thereafter, however, he testified that he found one of her brothers "cleaning the place up". When the sergeant instructed the brother that he could not work on the premises, the brother questioned the sergeant's authority and insisted that he could work there.

On the appeal, the appellant denied that she was a "front" for any member of her family. She likewise denied that she intended to employ her brothers or father to assist her in the operation of the business. There was offered in evidence a contract between herself and the present owner to purchase the premises.

The question before me is whether, under all the circumstances in the case, respondent acted improperly in refusing to accept the appellant's representation that she is the real and only party in interest and fully qualified to hold a license to sell alcoholic beverages.

A liquor license is, as has been frequently stated, a privilege and not a matter of right. The Alcoholic Beverage Law, R.S. 33:1-24, requires municipal issuing authorities "to investigate applicants and to inspect premises sought to be licensed;***" The respondent's investigation of the application was in accord with the letter and spirit of the statute.

The power to issue retail liquor licenses has been conferred upon municipal issuing authorities. Subject to review by the Commissioner on appeal, (R.S. 33:1-22; R.S. 33:1-26), it rests within the discretionary power of the municipal issuing authority to license or not to license. The exercise of the power by the local issuing authority, however, must be founded on valid and substantial grounds. The Supreme Court, in Bumball v. Burnett, 115 N.J.L. 254, 255, in an opinion written by Mr. Justice Parker, stated: "we see no illegality whatever in the refusal of a particular license, at least so long as the refusal is not shown to be fraudulent, corrupt, or inspired by improper motives.***" I find no evidence in this case that the denial by the respondent was inspired by improper motives.

It was wholly within the bounds of the discretionary power vested in the municipal issuing authority for it to require the applicant to furnish satisfactory proof of the bona fides of the application. It is proper for the issuing authority to require proof on this point to the same extent that it may (and should) require an applicant to furnish satisfactory proof of any other requisite for obtaining a license, such as age, citizenship, residence, character, etc. It is incumbent upon the applicant, as the moving party seeking a discretionary privilege, to furnish this reasonable requisite proof and to demonstrate affirmatively that he or she is fully qualified to hold a license. Were it otherwise, the applicant, no matter how great the suspicion of his being a "front", would be able to secure a license even though he failed to offer tangible and convincing proof of the bona fides of his application.

It cannot be said that respondent was unreasonable in its determination that appellant had not offered satisfactory proof that she was the real and only party in interest. Nor was it unreasonable for the respondent to conclude that appellant's apparent ignorance of all essential details of the business and her purported purchase thereof confirmed, rather than disproved, its reasonable suspicions with respect to the bona fides of her application.

I am not unmindful of the fact that in several past appellate decisions involving a somewhat similar issue, I reversed the denial of the local issuing authority on condition that the person suspected of being the real owner "shall not be permitted on the licensed premises at any time for any reason whatsoever".

For example, see Calabrese v. Newark, Bulletin 475, Item 2; Amato v. Harrison, Bulletin 549, Item 2. In those cases, the Commissioner attempted to reach a practical and equitable solution to the problem with fairness to all parties concerned. The acceptance of the condition by the applicant for the license was regarded as sufficient token of his good faith and as a reasonable safeguard against the existence of a "front".

Notwithstanding the fact that elements were present in the cited cases not found in the facts in the present case, I have reconsidered the whole problem. I am frank to admit that the decision in the Amato case, supra, may have imposed upon the local authorities an unfair burden of maintaining a constant vigil to insure compliance with the condition. Within four months after my decision in the Amato case,

the Department was compelled to institute disciplinary proceedings for, among other things, violation of the condition, and, upon a guilty plea to the charges, I revoked the license. Re Amato, Bulletin 569, Item 9.

The above mentioned appellate decisions, in so far as they may be inconsistent with the present decision, are overruled.

The action of respondent is affirmed.

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

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

ALFRED E. DRISCOLL,

Commissioner

8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO PERSON ACTUALLY OR APPARENTLY INTOXICATED - PERMITTING FEMALE EMPLOYEE TO ACCEPT ALCOHOLIC BEVERAGES AT THE EXPENSE OF A PATRON IN VIOLATION OF RULE 22 OF STATE REGULATIONS NO. 20 - 40 DAYS' SUSPENSION.

HEREIN OF AGENT HOLDING POWER OF ATTORNEY.

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| In the Matter of Disciplinary Proceedings against<br><br>THOMAS DiNAPOLI,<br>t/a VENICE BAR & RESTAURANT,<br>33 South Broadway,<br>Long Branch, New Jersey,<br><br>Holder of Plenary Retail Consumption License C-53 issued by the Board of Commissioners of the City of Long Branch. | CONCLUSIONS AND ORDER |

A. Henry Giordano, Esq., Attorney for Defendant-licensee.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to the following charges:

"1. On Monday night, February 1st, 1943, and early Tuesday morning, February 2nd, 1943, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to Private Conrad S---, a person who was actually or apparently intoxicated, and allowed, permitted and suffered the consumption of alcoholic beverages by such person on the licensed premises, in violation of Rule 1 of State Regulations No. 20.

"2. During the time aforesaid, you allowed, permitted and suffered a female employed on the licensed premises to accept beverages at the expense of and as a gift from a customer, viz., the aforesaid Private Conrad S---, in violation of Rule 22 of State Regulations No. 20."

On February 1, 1943, at about 10:45 P. M., a member of the military police entered defendant's premises. After he had observed the service by a male bartender of two glasses of beer to Private Conrad S---, who appeared to be intoxicated, he summoned two investigators of the Department of Alcoholic Beverage Control. The investigators entered the premises at about 11:30 P.M. At that time Private Conrad S--- was seated at the bar and drinking a glass of beer. The investigators expressed the opinion that at that time the soldier was apparently intoxicated because his eyes were partly closed, his head was bobbing around and he spilled some of the beer on his chin and clothing. The investigators further testified that, after the soldier had consumed part of this drink, he left the bar, walked ten steps, stopped in the middle of the floor, returned to the bar and was served another glass of beer which he drank "right down in one drink." This last service was made by the licensee's daughter who drank a glass of whiskey which was paid for out of the soldier's money. Because she "didn't want him to go out in that condition," the licensee's daughter then took the soldier to another room to permit him to rest. Later, the soldier left the licensed premises with the assistance of ABC investigators, was placed in a vehicle and returned to his camp.

On behalf of defendant, the licensee's daughter and the bartender testified that, on the evening in question, a number of glasses of beer had been served to the soldier but that he appeared to be sober until he left the bar. Both of these witnesses testified that thereafter no drinks were served to the soldier.

I believe the testimony of the military police and the investigators rather than the testimony of the witnesses who appeard on behalf of defendant and who are interested in the outcome of this case. I conclude that on the evening in question the soldier was intoxicated or apparently intoxicated, and that alcoholic beverages were served to him while he was in that condition. Hence I find defendant guilty as to the first charge.

As to the second charge: Defendant-licensee entered a hospital on September 2, 1942, and remained there for about two months. Shortly prior to September 2, 1942, he executed a power of attorney wherein he appointed his daughter as his true and lawful attorney to manage, conduct and carry on his business. Defendant-licensee was not present when the alleged violations occurred, but later in the same evening he gave statements to the ABC investigators. It is argued that, because of the existence of the power of attorney and the fact that the daughter received no salary, she cannot be considered an employee. This argument is without any merit. A power of attorney is merely an instrument authorizing a person to act as an agent or attorney for the person granting the power. On the evening in question the daughter was managing the business on behalf of defendant and was then acting as his agent. The fact that she received no salary for her services does not in any way affect her status as an employee within the meaning of that term as used in the Alcoholic Beverage Law and the State rules and regulations. Re Vlaminck, Bulletin 147, Item 4; Danker v. Ocean, Bulletin 448, Item 1. Hence I find defendant guilty as to charge (2).

As to penalty: I have repeatedly stated that the sale of liquor to men in uniform, when they are intoxicated or apparently intoxicated, is not only a serious violation but an unpatriotic act. The absence of defendant-licensee does not relieve him of his personal responsibility for the conduct of the licensed premises and the observance of the law by his agents, servants and employees. The licensee has been in business since Repeal and has no prior record. Considering all

the facts of this case, I shall suspend defendant's license for a period of forty days because of the violation set forth in charge (1). Re Rowley, Bulletin 560, Item 11. I shall accept the daughter's testimony that she acted in good faith in believing that the power of attorney gave her the status of a licensee. However, females employed on licensed premises, whether or not they have been appointed as attorney by a licensee, are now on notice that they may not accept beverages at the expense of and as a gift of a customer. In view of the substantial penalty imposed on the first charge, I shall, since this is a case of first impression on this point, impose no further penalty on charge (2).

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

ORDERED that plenary retail consumption license C-53, issued by the Board of Commissioners of the City of Long Branch to Thomas DiNapoli, t/a Venice Bar & Restaurant, for premises 33 South Broadway, Long Branch, be and the same is hereby suspended for the balance of the term, effective at 2 A. M. June 17, 1943; and it is further

ORDERED that if any license be issued to this licensee or any other person for the premises in question for the 1943-44 fiscal year, such license shall be under suspension until 2 A. M. July 27, 1943.

Alfred E. Driscoll

Commissioner.