

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

BULLETIN 818

OCTOBER 14, 1948.

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

BULLETIN 818

OCTOBER 14, 1948.

1. APPELLATE DECISIONS - PASSARELLA v. ATLANTIC CITY AND VENAFRO.

ANNA PASSARELLA,)
Appellant,)
-vs-) ON APPEAL
BOARD OF COMMISSIONERS OF THE) CONCLUSIONS AND ORDER
CITY OF ATLANTIC CITY, and)
ANTHONY VENAFRO, trading as)
VILLAGE BAR,)
Respondents)

John A. Miller, Esq., Attorney for Appellant.
Daniel J. Dowling, Esq., Attorney for Respondent Board of Commissioners.
Paul J. Farley, Esq. and Julius Waldman, Esq., Attorneys for
Respondent Anthony Venafro.

BY THE COMMISSIONER:

This is an appeal from the granting of a transfer of a plenary retail consumption license (for the 1947-48 fiscal year), held by respondent Anthony Venafro, from premises 16 N. Missouri Avenue to 12 N. Missouri Avenue.

Respondent Venafro is the son-in-law of appellant. In 1941 he became a tenant in premises at 16 N. Missouri Avenue, owned by appellant. He lived therein and operated there his licensed business from 1941 until about May 15, 1948. During the period from May 1, 1947 until April 30, 1948, respondent Venafro occupied the premises by virtue of a verbal lease between him and appellant. This lease, for a term of one year, provided that rent should be at the rate of \$125.00 per month. On March 30, 1948, appellant's attorney, or agent, notified respondent Venafro, by letter, that "the rent for premises occupied by you will be \$150.00 per month beginning May 1, 1948". During April 1948 there were several discussions between appellant's attorney and Venafro's attorney in reference to the increase in rent. Two letters written during April 1948 by Venafro's attorney to appellant's attorney notified him that no such increase would be paid, and one letter states that "in the event you insist on increasing the monthly rental," Venafro intended to move. On May 2, 1948, Venafro tendered Mrs. Passarella's attorney the sum of \$125.00 for the May rent at the old rate. This was refused. Shortly after May 2, 1948, Venafro started to remove his personal effects from 16 N. Missouri Avenue. Meanwhile, Venafro had secured other premises for his licensed business and, on May 12, 1948, signed an agreement and lease respecting such other premises. On the same day he received a letter from Mrs. Passarella's attorney advising him that Mrs. Passarella would accept the \$125.00 as the monthly rental. I think it is immaterial whether or not a similar offer was verbally communicated to Venafro on May 9, 1948 because, in any event, the offer was too late. On May 17, 1948, Mr. Venafro's attorney offered Mrs. Passarella's attorney the keys to the premises. The offer was refused.

On May 10, 1948, Anthony Venafro filed his application seeking a transfer of his plenary retail consumption license from 16 North Missouri Avenue to premises to be constructed at 12 North Missouri Avenue. On May 11th and 18th, notice of the application for transfer was published in a newspaper as provided by law. This advertisement bore the statement, among other things, "Plans and specifications of the building to be constructed at 12 North Missouri Avenue may be examined at the office of the City Clerk...."

While actually it appears the first plans, a preliminary architect's sketch, were not filed until May 12, 1948, and that the final and complete plans and specifications were not filed until May 20th, I find that such plans and specifications were a sufficient compliance with the rule and that the delay in filing did not adversely affect the interests of appellant, who was the sole objector. Actually, no suggestion is made in the record herein that the premises, if erected as planned, will not be entirely satisfactory as a building in which a licensed business may be conducted. The requirement of filing plans and specifications is to enable the local issuing authority and any other person interested therein to determine if such proposed building will be sufficient and satisfactory.

Upon objections to the transfer based upon allegations similar to those raised at the hearing here, the matter was fully heard by the respondent Board of Commissioners on May 27, 1948. On June 27th, respondent Board of Commissioners granted the transfer subject to proper condition in reference to completion of the proposed building.

Appellant's "reason for reversal", other than the "filing" question heretofore disposed of, poses three other questions of law. First, that a license cannot be transferred to a proposed building. Such is not the case. As early as June 1937, in Re Harris, Bulletin 183, Item 11, and as to transfers specifically in Re Salter, Bulletin 184, Item 8, the then Commissioner ruled that such procedure is permissible under the law. Such has ever since been the construction of the law. I see no reason to change it. Second, that the Board of Commissioners could not by resolution impose the "special condition" relative to the completion of the building. This point is likewise covered by the rulings set forth above. Third, that the Board of Commissioners must pass an ordinance permitting the transfer. The power to grant the transfer is conferred upon respondent Board by the provisions of R. S. 35:1-26. No enabling ordinance is necessary.

The remaining three "reasons" relate to an ordinance of the City of Atlantic City. The ordinance in its pertinent part provides:

"Section 7. No plenary retail consumption or plenary retail distribution license, except renewals of licenses presently outstanding, shall be issued for, or transferred to any premises within three hundred feet of premises for which a license of either type is outstanding, *** provided further, that in case possession of the premises covered by any such license is demanded by the lawful owner thereof by bona fide demand for such possession, or should notice of eviction or intention to evict be served upon the licensee by the lawful owner of such premises, and when the cause of such demand for possession or notice of eviction is not due to improper conduct on the part of the licensee, and when a license has heretofore been granted for said premises for a continuous period of at least ten years, a transfer may be granted as above provided to the same licensee, or a transfer may be granted to the same licensee to other premises within three hundred feet of the premises from which the licensee is being dispossessed, even though the said other premises be within three hundred feet of premises for which a license of either type is outstanding ***"

Admittedly, the transfer is to premises within 300 feet of other licensed premises and is within 300 feet of the premises from which the license is being transferred. There is no evidence as to any improper conduct by the licensee.

Appellant's principal contention is that there was no bona fide demand for possession by the lawful owner. Under the circumstances, I believe that there was such a demand within the meaning of the ordinance. The evidence shows that the respondent Venafro's right of possession based on a verbal lease for a stipulated monthly rental

expired on April 30, 1948. He was advised by the person to whom he had always paid his rent (the attorney or agent of the appellant) that commencing with May 1, 1948 his rent would be \$150.00 per month. Actually this must mean, "Get out when your present lease expires or pay \$150.00 per month thereafter." The increased rental was again demanded on May 2, 1948. The Board of Commissioners, ordinarily, has no jurisdiction to determine matters affecting the relationship of landlord and tenant. It seems to me that the language used in the ordinance relative to demand for possession does not refer to any written notice which may be necessary in landlord and tenant cases, but must be held to mean any demand that a reasonable man would assume to be sufficient. Viewed in any other way, the ordinance might be illegal as an attempt unduly to restrict the right to transfer and to anchor the license to a building, a practice that has been held improper. Cf. Cielukowski v. Jersey City, Bulletin 716, Item 6.

The burden of establishing that the action of the issuing authority was erroneous and should be reversed rests with the appellant. State Regulations No. 15, Rule 6. The proof adduced by appellant herein falls far short of meeting such requirement. The action of the respondent Board of Commissioners will be affirmed.

Accordingly, it is, on this 5th day of October, 1948,

ORDERED that the action of respondent Board be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
 PATRICK ESPOSITO)
 T/a PATRICK ESPOSITO GROCERIES)
 9 Waverly Place)
 Madison, N. J.,)
 Holder of Plenary Retail Distribution License D-1 issued by the)
 Borough Council of the Borough of)
 Madison.)

CONCLUSIONS
AND ORDER

Patrick Esposito, Defendant-licensee, Pro Se,
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleaded non vult to a charge alleging that he sold a 4/5 quart bottle of Schenley Reserve Blended Whiskey below the established Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

On September 15, 1948, the licensee sold the product in question to an ABC agent for the sum of \$3.75, whereas the minimum retail price of said item as established in Bulletin 814, effective September 1, 1948, was \$4.04.

Defendant has no previous adjudicated record. I shall, therefore, suspend defendant's license for a period of ten days, less five days'

remission for the plea entered herein, or a net suspension of five days. Cf. Re Zar, Bulletin 816, Item 9.

Accordingly, it is, on this 6th day of October, 1948,

ORDERED that Plenary Retail Distribution License D-1, issued by the Borough Council of the Borough of Madison to Patrick Esposito, t/a Patrick Esposito Groceries, for premises 9 Waverly Place, Madison, be and the same is hereby suspended for five (5) days, commencing at 9:00 a.m. October 18, 1948, and terminating at 9:00 a.m. October 23, 1948.

ERWIN B. HOCK
Commissioner.

3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

LOUIS NEUMAN & MAX ROSENBLOOM)
T/a ROSE CITY DELICATESSEN)
32 Main Street)
Madison, N. J.,)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Distribution License D-12 issued by the Borough Council of the Borough of Madison.)

Philip Blank, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensees pleaded non vult to a charge alleging that they sold a 4/5 quart bottle of Seagram's Seven Crown Blended Whiskey below the established Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

On September 15, 1948, one of the licensees sold the product in question to an ABC agent for the sum of \$4.00, whereas the minimum retail price of said item, as established in Bulletin 814, effective September 1, 1948, was \$4.04.

Defendants have no previous adjudicated record. I shall, therefore, suspend defendants' license for a period of ten days, less five days' remission for the plea entered herein, or a net suspension of five days. Cf. Re Zar, Bulletin 816, Item 9.

Accordingly, it is, on this 6th day of October, 1948,

ORDERED that Plenary Retail Distribution License D-12, issued by the Borough Council of the Borough of Madison to Louis Neuman & Max Rosenbloom, t/a Rose City Delicatessen, for premises 32 Main Street, Madison, be and the same is hereby suspended for five (5) days, commencing at 9:00 a.m. October 18, 1948, and terminating at 9:00 a.m. October 23, 1948.

ERWIN B. HOCK
Commissioner.

October 7, 1948

4. RECAPITULATION OF ACTIVITY FOR QUARTERLY PERIOD FROM JULY 1, 1948 through September 30, 1948

	JULY	AUG.	SEPT.	TOTAL
ARRESTS:				
Licenses and employees	31	30	7	68
Bootleggers	3	2	0	5
ABC agent impersonators	27	27	7	61
	1	1	0	2
SEIZURES:				
Motor vehicles - cars	0	2	1	3
Still - over 50 gallons	1	0	0	1
- 50 gallons or under	2	0	0	2
Alcohol - gallons	0	1.16	0	1.16
Mash - gallons	150.00	0	0	150.00
Distilled alcoholic beverages - gallons	3.15	26.75	10.40	40.30
Wine - gallons	.69	110.02	1.80	112.51
Brewed malt alcoholic beverages - gallons	26.51	57.64	8.16	92.31
RETAIL LICENSEES:				
Premises inspected	633	640	572	1,845
Premises where alcoholic beverages were gauged	475	547	829	1,851
Bottles gauged	7,966	9,107	13,795	30,778
Premises where violations were found	21	35	43	99
Violations found	34	39	50	123
Type of violations found:				
Unqualified employees	18	8	15	41
Other mercantile business	1	1	14	16
Probable fronts	6	4	4	14
Gambling devices	4	2	7	13
Improper beer taps	2	4	5	11
Reg. #33 sign not posted	1	1	2	4
Prohibited signs	0	3	0	3
Disposal permit necessary	1	0	0	1
Other violations	1	16	3	20
STATE LICENSEES:				
Premises inspected	4	4	12	20
License applications investigated	25	18	14	57
COMPLAINTS:				
Complaints assigned for investigation	269	354	279	902
Investigations completed	329	370	360	1,059
Investigations pending			161	161
LABORATORY:				
Analyses made	105	145	115	365
"Shake-up" cases (alcohol, water and artificial color) - bottles	7	7	5	19
Liquor found to be not genuine as labeled - bottles	15	20	30	65
IDENTIFICATION BUREAU:				
Criminal fingerprint identifications made	23	32	18	73
Persons fingerprinted for non-criminal purposes	325	195	225	745
Identification contacts made with other enforcement agencies	285	170	178	633
Motor vehicle identifications via N.J. State Police Teletype	8	10	10	28
DISCIPLINARY PROCEEDINGS:				
Cases transmitted to municipalities	20	19	13	52
Violations involved:				
Sale during prohibited hours	5	7	11	23
Sale to minors	9	5	2	16
Permitting brawls on premises	2	2	0	4
Mislabeling beer taps	0	5	0	5
Permitting bookmaking on premises	2	1	0	3
Sale to intoxicated persons	1	2	0	3
Sale outside scope of license	1	0	0	1
Sale to non-members by clubs	1	0	0	1
Cases instituted at Department (*2 include cancellation proceedings)	13	19	15*	47
Violations involved:				
Possessing illicit liquor	2	4	1	7
Sale during prohibited hours	4	2	0	6
Sale below Fair Trade price	1	2	3	6
Fraud and front	0	2	3*	5
Mislabeling beer taps	0	4	4	8
Transportation in unlicensed vehicle	0	4	0	4
Delivery by wholesaler without accompanying invoice	0	3	0	3
Delivery by wholesaler not supported by order	0	3	0	3
Solicitor giving inducement with sale to retailer	0	2	0	2
Conducting business as a nuisance	2	0	0	2
Furthering illegal activity	2	0	0	2
Permitting immoral activity	2	0	0	2
Permitting pin ball machines on premises	1	0	1	2
Hindering investigation	1	0	1	2
Sale outside scope of license	1	0	1	2
Permitting hostesses on premises	1	0	0	1
Purchase from improper source	1	0	0	1
Sale to intoxicated persons	1	0	0	1
Sale to non-members by clubs	1	0	0	1
Sale by wholesaler under listed price	0	1	0	1
Wholesaler furnishing free goods to retailer	0	1	0	1
Wholesaler furnishing inducement with sale to retailer	0	1	0	1
Aiding and abetting unlicensed transportation	0	1	0	1
Failure to affix transportation insignia to vehicle	0	1	0	1

- 5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES FOR CONSUMPTION OFF THE LICENSED PREMISES IN OTHER THAN ORIGINAL CONTAINERS, IN VIOLATION OF R. S. 33:1-2 - REFILLING WINE BOTTLES, IN VIOLATION OF R. S. 33:1-78 - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ARTURO SOCCOL)
 T/a SOCCOL'S CAFE)
 66 Lake Avenue)
 Clifton, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-100, issued by the Municipal Council of the City of Clifton.)

-----)
 Arturo Soccol, Defendant-licensee, Pro Se,)
 Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.)

BY THE COMMISSIONER:

The defendant pleaded non vult to charges alleging that he (1) sold wine for off-premises consumption in other than original containers, in violation of R. S. 33:1-2, and (2) filled various bottles with wine for purpose of sale, in violation of R. S. 33:1-78.

On September 9, 1948, an ABC agent observed the defendant's bartender make several sales of wine for off-premises consumption by pouring the wine from a gallon jug into smaller containers. The next day, the agent was sold a quart of wine by the bartender, who filled the bottle from a gallon jug.

The wine that was thus unlawfully bottled and sold came from taxpaid containers. The usual penalty for this type of violation is ten days. Re Sodano, Bulletin 598, Item 2. Had the wine been non-taxpaid, a thirty-day penalty would have been warranted. Cf. Re Blue Moon Bar & Grill, Inc., Bulletin 619, Item 10.

The defendant's previous record includes a net ten-day suspension imposed in May 1945 upon a confessional plea to a curfew offense. See Bulletin 669, Item 7. Under the circumstances, I shall suspend the license for a period of fifteen days, less five days for the plea, leaving a net suspension of ten days.

Accordingly, it is, on this 7th day of October, 1948,

ORDERED that Plenary Retail Consumption License C-100, issued by the Municipal Council of the City of Clifton to Arturo Soccol, t/a Soccol's Cafe, for premises 66 Lake Avenue, Clifton, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. October 18, 1948, and terminating at 3:00 a.m. October 28, 1948.

ERWIN B. HOCK
 Commissioner.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PRIOR WARNING - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against

HYMAN MORGENSTERN
431 Broad St. & 11-a Lackawanna Ave.)
Newark 2, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-460 for the 1947-48 and 1948-49 licensing years, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Sidney Simandl, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded not guilty to the following charge:

"On January 24, 1948, you possessed an illicit alcoholic beverage at your licensed premises, viz., an alcoholic beverage in

one 4/5 quart bottle labeled 'Wilson That's All Blended Whiskey',

which bottle bore a label which did not truly describe its contents; such possession being in violation of R. S. 33:1-50."

On January 24, 1948, an agent of the Department of Alcoholic Beverage Control made an inspection of defendant's licensed premises. When the agent entered the premises the defendant was behind the bar. The agent observed a funnel and an empty bottle on the drainboard. The agent testified that shortly thereafter the defendant put the funnel in a drawer and threw this bottle, which bore a "Carstairs" label, in a trash can. The agent further testified that thereafter he observed the defendant take a 4/5 quart bottle labeled "Wilson That's All Blended Whiskey" from the back bar and place this bottle on the floor in back of the trash can. The agent picked up the bottle of "Wilson" which contained about fourteen ounces of whiskey. When his field test indicated the likelihood that the contents of said bottle were not genuine as labeled, the agent seized the bottle and subsequently delivered it to the chemist employed by the Department of Alcoholic Beverage Control for formal analysis.

The chemist employed by the Department of Alcoholic Beverage Control testified that he analyzed the contents of the seized bottle and obtained the following results:

Proof 86°
Acids 25.92 grams per 100 liters
Solids 338. grams per 100 liters
Color Artificial color added.

A chemist employed by defendant testified that his findings as to proof, acids, solids and artificial coloring were substantially the same.

The chemist employed by the Department of Alcoholic Beverage Control further testified that he had previously analyzed the contents

of seven genuine bottles of "Wilson That's All Blended Whiskey 86.8 proof" of the same formula, and that none of said bottles contained solids in excess of 256 grams per 100 liters. He also testified that the color of the contents of the seized bottle was darker than the color of the contents of the seven genuine bottles. Because of the high solid content and the darker color, he expressed the opinion that the contents of the seized bottle did not conform with the label on the bottle. A letter introduced into evidence sets forth that "the plant chemists advise that the solid content of Wilson since October 31, 1947, has averaged approximately 150 G/100L with a high of approximately 250 G/100L."

The chemist employed by the defendant testified that the contents of the seized bottle "appear to meet the constituents which we would expect in a whiskey as described on the label". He further testified that his analysis "indicates that there is present in this bottle a blended whiskey which contains in it whiskeys that are of an age of approximately five years and which by the constituents, such as aldehydes and esters, appear to be about one-quarter to one-third aged whiskey, with the rest a dilutant, which in this case is alcohol and water". The chemist employed by the defendant admitted that he had not analyzed the contents of any bottles of "Wilson That's All Blended Whiskey" of the formula in question prior to the present case.

It may well be, as the chemist employed by the defendant says, that the seized bottle contained whiskeys of an age of approximately five years, with the rest a dilutant. His testimony indicates that it may be the same type of whiskey as that described on the label, but such testimony falls far short of establishing that the seized bottle contained "Wilson That's All Blended Whiskey" as labeled. On the other hand, the testimony given by the chemist employed by the Department of Alcoholic Beverage Control, and the letter introduced into evidence, indicate that the defendant possessed a bottle containing an alcoholic beverage bearing a label which did not truly describe its contents. Under the provisions of R. S. 33:1-88 this constituted prima facie evidence that the bottle contained an illicit beverage. The testimony given by defendant's chemist is not sufficient to overcome this presumption. Hence I find defendant guilty as charged. Panda v. Driscoll, 135 N.J.L. 164; Cedar Restaurant v. Hock, 135 N.J.L. 156; English v. Hock, 137 N.J.L. 34.

Defendant has no prior adjudicated record, although he received warnings in 1940 and 1944 concerning alcoholic beverages which appeared to be off proof. However, because of the length of time which has elapsed since such warnings, I shall impose the minimum suspension and shall suspend defendant's license for the minimum period of fifteen days. Re Rudolph, Bulletin 680, Item 1.

Although this proceeding was instituted during the 1947-48 licensing year, it does not abate but remains fully effective against the renewal license for the 1948-49 licensing year. State Regulations No. 16.

Accordingly, it is, on this 7th day of October, 1948,

ORDERED that Plenary Retail Consumption License C-460, issued for the 1948-49 licensing year by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Hyman Morgenstern, for premises 431 Broad St. & 11-a Lackawanna Avenue, Newark, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. October 19, 1948, and terminating at 2:00 a.m. November 3, 1948.

ERWIN B. HOCK
Commissioner.

7. DISCIPLINARY PROCEEDINGS - CHARGE OF FALSE ANSWER IN LICENSE APPLICATION DISMISSED - DEPARTMENT FAILED TO SUSTAIN BURDEN OF PROOF AS TO NON-RESIDENCE IN NEW JERSEY.

In the Matter of Disciplinary Proceedings against)
)
 SHANGRI-LA, INC.)
 236-238 Market Street)
 Paterson 1, N. J.,)
)
 Holder of Plenary Retail Consumption License C-242 for the 1947-48)
 and 1948-49 licensing periods,)
 issued by the Board of Alcoholic)
 Beverage Control of the City of)
 Paterson.)

CONCLUSIONS AND ORDER

 A. Leon Kohlreiter, Esc., Attorney for Defendant-licensee.
 William F. Wood, Esc., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to the following charge:

"In your application dated May 28, 1947, filed with the Board of Alcoholic Beverage Control of the City of Paterson, upon which you obtained your current plenary retail consumption license, you, in answer to Questions 20, 21 and 22, falsely listed the residences of Domenic Naccarato and Joseph Caniano (each the holder of 33-1/3% of your stock) as 22 Garratsee Place, Clifton, New Jersey and 204 Westminister Place, Lodi, New Jersey, respectively, and you also stated 'Yes' in answer to Question 27(a), which asks: 'Are you and all persons mentioned in this application actual and bona fide residents of the State of New Jersey at the present time?', whereas in truth and fact Domenic Naccarato and Joseph Caniano resided at such time at 5213 Corlear Avenue, Bronx, New York and 46 Wadsworth Terrace, New York City, respectively; said false statements being in violation of R. S. 33:1-25."

Defendant also appeared in opposition to an order to show cause why its license should not be cancelled and declared null and void because the license was improvidently issued in violation of R.S. 33:1-25 in that, at the time of the issuance of the license, the corporation was disqualified from obtaining a license because Domenic Naccarato and Joseph Caniano (each the holder of more than 10% of its stock) lacked bona fide New Jersey residence.

Since May 1946 Domenic Naccarato and Joseph Caniano has each owned 33-1/3% of the stock of defendant corporation.

At the hearing Domenic Naccarato testified that in September 1945 he moved from the City of New York to a furnished room at 22 Garratsee Place, Clifton, and that he has resided at the latter address since that time. In support of said testimony he introduced into evidence a letter dated January 14, 1946, addressed to him at the Clifton address, the pertinent part of which reads as follows:

"I called Rose at the store in New York thinking that I could communicate with you, and she advised me that you never come in, only week-ends. In view of this fact, I would appreciate a telephone call from you ***."

He also testified that he has not voted in the State of New York since 1944, and specifically denied that he voted in New York in 1946; that he registered to vote in New Jersey about three weeks before the hearing which was held on May 12, 1948, and that he obtained a driver's license and an owner's license for his automobile in New Jersey about two weeks before said hearing. His automobile had previously been registered in New York. Domenic Naccarato testified that in September 1945 it was his intention to become a resident of the State of New Jersey, and that he never changed that intention from September 1945 until the date of hearing.

The testimony further shows that the wife of Domenic Naccarato has conducted a shoe store in the City of New York for the past thirty years, and that she is the owner of the building located at 3213 Corlear Avenue, Bronx, N. Y. Both the business and the house were left to her by her first husband and, at the time of the hearing, she was living at the Corlear Avenue address. Domenic Naccarato testified that, since September 1945, he visited his wife at the New York address on Mondays and Tuesdays of each week, but that he spent the rest of his free time at the Clifton address. He further testified that he tried repeatedly to find an apartment for himself and his wife in New Jersey, but that he has been unable to do so.

Joseph Caniano testified that on January 1, 1946 he moved from New York City to a furnished room at 204 Westminster Place, Lodi, and that in November 1947 he again moved to a furnished room at 54 North 8th Street, Hawthorne, at which address he has resided since that time. He testified that since January 1, 1946 he has never registered or cast a vote in the State of New York. He registered as a voter in New Jersey a few weeks prior to the hearing. He does not own an automobile, but has held a driver's license issued by the State of New York for the past nineteen years. He testified that, since he owns no automobile, he did not apply for a driver's license in New Jersey, but merely renewed his New York license from time to time. He testified that in January 1946 it was his intention to become a resident of New Jersey, and that he has never changed that intention.

Joseph Caniano further testified that he has one child. This child, born of his first wife, has resided for more than twelve years with the child's grandmother. Caniano married his second wife in 1945, and thereafter resided with his wife at her mother's home located at 46 Madsworth Terrace, New York City, until he moved to New Jersey on January 1, 1946. He admits that he visits his wife at her mother's home over week-ends, but states that they have no separate apartment at that address. He also testified that he has tried on numerous occasions to obtain a home for his wife and child in New Jersey but has been unable to do so.

The words "resident" and "residence" as presently used in the Alcoholic Beverage Law contemplate physical presence in addition to domicile. Re Gellert, Bulletin 618, Item 1; Re Paul, Bulletin 620, Item 8. In Stout v. Leonard, 37 N.J.L. 498, Chancellor Runyon says:

"Residence is not domicile, though domicile is the legal conception of residence. Domicile is residence combined with intention."

There is no doubt that each of these individuals has maintained a furnished room in New Jersey for a period of nearly three years last past. They testified that they became residents of New Jersey "animo manendi". In the ordinary case it would not be sufficient for a married man to hire a furnished room in this state and to maintain a home for his family and continue his other interests in another state.

Ordinarily such evidence would indicate that the man did not intend to become a permanent resident of New Jersey. However, I have examined the evidence carefully in this case and conclude that in each instance there is a sufficient reason why the wife has not become a resident of New Jersey.

In addition, their position is fortified by their long period of physical presence in this state and the fact that neither individual has had any business interest outside of New Jersey since May 1946. A careful review of all the circumstances fails to satisfy me as to the truth of the allegations contained in the charge and, accordingly, I shall dismiss the charge and discharge the order to show cause.

Accordingly, it is, on this 8th day of October, 1948,

ORDERED that the charge herein be and the same is hereby dismissed, and the order to show cause be and the same is hereby discharged.

ERWIN B. HOCK
Commissioner.

8. DISCIPLINARY PROCEEDINGS - ALLOWING,
PERMITTING AND SUFFERING DISTURBANCE AND BRAWL ON LICENSED PREMISES-
PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary)
Proceedings against)
)
ROBERT TROMBLEY)
T/a WONDER BAR)
135 Hamilton Avenue)
Seaside Heights, N.J.,)
)
Holder of Plenary Retail Consump-)
tion License C-9 issued by the)
Mayor and Borough Council of the)
Borough of Seaside Heights.)
-----)

CONCLUSIONS
AND ORDER

Robert Trombley, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded not guilty to the following charge:

"On or about August 15, 1948, you allowed, permitted and suffered a disturbance and brawl in and upon the licensed premises, in violation of Rule 5 of State Regulations No. 20."

At about 12:30 a.m. on August 15, 1948, Mr. H--- and his wife, and Mr. G--- and his wife, visited defendant's premises. Mrs. H--- is a sister of Mr. G---. These four persons had previously visited three other licensed premises on the evening in question.

According to the evidence introduced at the hearing, there are two distinct versions, which cannot be reconciled, as to the events which occurred at the licensed premises. According to the testimony of Mr. and Mrs. H---, the licensee and his wife went to a table at which these witnesses were seated and, after some discussion about the quality of a brandy which had been served, the licensee and his wife pushed Mrs. H--- without any apparent reason. According to the testimony of Mr. G---, he saw his sister being pushed and, shortly after he went to investigate, a bartender struck him on the head with a bottle and numerous patrons pushed him. A member of the Marine Corps, who had joined the party of four after they entered defendant's premises, testified that he saw this bartender strike Mr. G--- on the head with a bottle.

The defendant testified that, when he approached the table, Mrs. H--- claimed that her pocketbook containing \$80.00 had been stolen in the licensed premises. The licensee further testified that, shortly thereafter, Mrs. H--- wanted to leave the premises but that he placed his hands upon her shoulder and told her that she would have to wait for the police who had been summoned. According to the defendant, Mr. G--- then came over and punched defendant in the nose, with the result that defendant's glasses were broken. The bartender previously mentioned testified that he remained at his post behind the bar, and denied that he struck Mr. G--- at any time. He specifically denied that he struck him with a bottle. The testimony of this bartender is corroborated by the defendant, and defendant's son who was also tending bar.

Despite the difficulty of reaching a conclusion as to exactly what happened on the licensed premises, and without attempting to determine who was the aggressor and who was the attacked, I am satisfied that the evidence is sufficient to sustain a conclusion that defendant "allowed, permitted and suffered" a disturbance and brawl in his licensed premises, rendering his license subject to suspension or revocation in this administrative proceeding, within the meaning of the language used in Rule 5 of State Regulations No. 20. Cf. Essex Holding Corp. v. Hock, 136 N.J.L. 28. I reach this conclusion because it clearly appears that there was a disturbance and brawl which continued for a period of at least five minutes, during which time defendant and his agents did little, if anything, to quell the disturbance. Viewing the case in the light most favorable to defendant, it appears that Mr. G---, even if he were the original aggressor, was severely beaten by numerous other patrons in the immediate presence of the licensee. The beating was so severe that Mr. G--- sustained a cut on the head and an additional cut under the right eye which required three stitches. I conclude that under these circumstances the defendant allowed, permitted and suffered the disturbance to take place in his licensed premises. Hence I find defendant guilty as charged.

In November 1947 the defendant's license was suspended for selling alcoholic beverages during prohibited hours. See Bulletin 784, Item 9. Under all the circumstances, I shall suspend the license for a period of twenty days. Cf. Re Teevan and Lynch, Bulletin 676, Item 11.

Accordingly, it is, on this 8th day of October, 1948,

ORDERED that Plenary Retail Consumption License C-9, issued by the Mayor and Borough Council of the Borough of Seaside Heights to Robert Trombley, t/a Wonder Bar, for premises 135 Hamilton Avenue, Seaside Heights, be and the same is hereby suspended for a period of twenty (20) days, commencing at 7:00 a.m. October 19, 1948, and terminating at 7:00 a.m. November 8, 1948.

ERWIN B. HOCK
Commissioner.

9. DISCIPLINARY PROCEEDINGS - MISLABELED BEER TAP - LICENSE SUSPENDED FOR 3 DAYS, LESS 1 FOR PLEA.

In the Matter of Disciplinary Proceedings against

MARK A. MALIA
T/a MALIA'S CAFE
201 S. Virginia Avenue
Atlantic City, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-49, issued by the Board of Commissioners of the City of Atlantic City.

Frank S. Farley, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleads non vult to the charge that, on August 30, 1948, there was a mislabeled beer tap in his tavern, in violation of Rule 1 of State Regulations No. 22.

An ABC agent, on routine inspection of the defendant's licensed premises on the day in question, found that beer was being drawn from a barrel marked "Ballantine" through a spigot labeled "Hohenadel".

Defendant's claim that the wrong label was inadvertently placed on the tap affords no excuse for the violation committed.

Since defendant has no previous adjudicated record, his license will, in line with past decisions in this type of case, be suspended for a period of three days. Cf. Re Badyna, Bulletin 797, Item 5. In accordance with the Department's policy of remissions on non vult pleas, one day will be remitted in this case, leaving a net suspension of two days.

Accordingly, it is, on this 8th day of October, 1948,

ORDERED that Plenary Retail Consumption License C-49, issued by the Board of Commissioners of the City of Atlantic City to Mark A. Malia, t/a Malia's Cafe, for premises 201 S. Virginia Avenue, Atlantic City, be and the same is hereby suspended for a period of two (2) days, commencing at 7:00 a.m. October 18, 1948, and terminating at 7:00 a.m. October 20, 1948.

ERWIN B. HOCK
Commissioner.

10. DISCIPLINARY PROCEEDINGS - MISLABELED BEER TAP - LICENSE SUSPENDED FOR 3 DAYS; LESS 1 FOR PLEA.

In the Matter of Disciplinary Proceedings against SHORE BUSINESS ENTERPRISES, INC. T/a LITTLE BROWN JUG 117 North So. Carolina Avenue Atlantic City, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-132, issued by the Board of Commissioners of the City of Atlantic City.

Kirkman, Mulligan & Harris, Esqs., by Frank P. Mulligan, Esq., Edward F. Ambrose, Esq., appearing for Defendant-licensee. Attorneys for Defendant-licensee. appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleads non vult to the charge that, on August 30, 1948, there was a mislabeled beer tap in his licensed premises, in violation of Rule 1 of State Regulations No. 22.

An ABC agent, on routine inspection of the defendant's licensed premises on the day in question, found that beer was being drawn from a barrel marked "Krueger" through a spigot labeled "Cooper".

Defendant claims that an employee, in conjunction with a brewery truck driver, was responsible for the violation. Nevertheless, defendant is responsible for the violation since it possessed a mislabeled beer tap on its licensed premises.

Defendant has no previous adjudicated record. The license, therefore, will be suspended for a period of three days, less one day's remission because of the plea entered herein, or a net suspension of two days. Re Badyna, Bulletin 797, Item 5.

Accordingly, it is, on this 8th day of October, 1948,

ORDERED that Plenary Retail Consumption License C-132, issued by the Board of Commissioners of the City of Atlantic City to Shore Business Enterprises, Inc., t/a Little Brown Jug, for premises 117 North So. Carolina Avenue, Atlantic City, be and the same is hereby suspended for a period of two (2) days, commencing at 7:00 a.m. October 18, 1948, and terminating at 7:00 a.m. October 20, 1948.

Lawrence E. Hook

Commissioner.

New Jersey State Library