

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

BULLETIN 672

JUNE 29, 1945.

1. ELIGIBILITY - CRIME OF CONSPIRACY TO USE THE MAILS TO DEFRAUD AND USE OF THE MAILS IN A SCHEME TO DEFRAUD INVOLVES MORAL TURPITUDE - APPLICANT ADVISED THAT HE IS NOT ELIGIBLE TO BE EMPLOYED BY A LIQUOR LICENSEE.

June 19, 1945

Re: Eligibility Case No. 567.

A hearing has been held herein to determine applicant's eligibility for employment by a liquor licensee in this State.

On February 9, 1939 applicant was fined \$7500.00 in the United States District Court after he had pleaded nolo contendere to a charge that he had violated the Volstead Act. At the hearing applicant testified that the alleged violation occurred prior to Repeal, namely, during the year 1931 or 1932. For the reasons hereinafter stated, it is unnecessary to determine in this proceeding whether the crime of which applicant was convicted in 1939 did or did not involve moral turpitude.

Fingerprint records disclose that, on December 1, 1941, applicant was arrested on a charge designated in the Federal records as "mail fraud - violation Security Act." On April 22, 1943 he was convicted in a District Court of the United States for conspiracy to use the mails to defraud and for the substantive offense of using them in a scheme to defraud. The Circuit Court of Appeals, on January 31, 1944, affirmed his conviction. Thereafter, on April 24, 1944, the United States Supreme Court denied an application for a writ of certiorari to review his conviction. Thereafter, as a result of his conviction, he was sentenced in the District Court to serve a term of eighteen months in a Federal Correctional Institution and was fined \$1,000.00. He entered the Federal institution on June 14, 1944 and was paroled therefrom on December 5, 1944.

At the hearing herein, applicant testified that his second conviction resulted from a complaint made by a representative of the Security Exchange Commission following a merger of three corporations engaged in the distribution of alcoholic beverages in which he and several associates were interested. One of the companies involved in the merger has its securities listed on the New York Curb Exchange. The specific allegations in the criminal proceedings against the applicant, who was one of several persons interested in the merger of the corporations, were that, during the course of the merger, there was an alleged over-statement of value of some of the assets of the merging corporations and that, in complying with the State Bulk Sales Act, certain notices had been mailed to creditors in violation of the postal laws. Applicant contends that the alleged over-statements, if made, were the result of an audit received from a firm of accountants and that, in sending the notices through the mail, the advice of a prominent firm of lawyers had been followed. It is assumed that these same defenses were raised during the lengthy criminal trial.

Applicant alleged at the hearing herein that, at most, he was guilty of violating the provisions of the Securities Exchange Commission and argues that a conviction for violation of these provisions does not constitute conviction of a crime involving moral turpitude. However, the record shows that he was in fact convicted by a jury of conspiracy to use the mails to defraud and for the substantive use of

the mails in a scheme to defraud. The record in the Federal Courts culminating in the conviction of the applicant may not be collaterally attacked in the instant proceedings. A crime of this character ordinarily involves moral turpitude. I have been unable to find anything in the instant case requiring a different finding. I conclude that the crime of which applicant was convicted involved moral turpitude.

Applicant is advised that he is not presently eligible to be employed by a liquor licensee in New Jersey.

ALFRED E. DRISCOLL
Commissioner.

2. REFERENDUM - MUST APPLY TO ENTIRE MUNICIPALITY - MAY NOT BE
CONFINED TO A PARTICULAR DISTRICT.

June 18, 1945

Mr. H. F. Hardy
Washington, N. J.

Dear Mr. Hardy:

I have your letter of June 14th asking whether or not it is correct (as you have been advised) that there may be a local option referendum under the Alcoholic Beverage Law to make "dry" one section only of Washington Township, Warren County.

There is being forwarded under separate cover for your information a pamphlet copy of the New Jersey Alcoholic Beverage Law. Please note particularly therein the local option provisions contained in R. S. 33:1-44, 33:1-45, 33:1-46, 33:1-47 and 33:1-47.1.

Enclosed with this letter is a copy of Re Disbrow, Bulletin 109, Item 7, which makes it clear that a referendum on the question of Sunday sales (R. S. 33:1-47) must apply to the entire municipality. The same is true as to a referendum under the other local option sections for the statute clearly indicates in each such section that the referendum affects the whole municipality.

You may be interested to learn that a few New Jersey municipalities have enacted ordinances which provide that retail alcoholic beverage licenses shall not be issued for premises in a designated and described residential or other section of the municipality. I am not recommending or suggesting enactment of such an ordinance in Washington Township but merely pointing out the matter for your information. It is possible, however, that the Township Committee may consider the question if so requested.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

3. CANCELLATION PROCEEDINGS - CLUB LICENSEE DID NOT HAVE EXCLUSIVE, CONTINUOUS POSSESSION FOR THREE YEARS PRIOR TO APPLICATION FOR LICENSE, AS REQUIRED BY RULE 4 OF STATE REGULATIONS NO. 7 - LICENSE ORDERED CANCELLED.

DISCIPLINARY PROCEEDINGS - FALSE ANSWERS IN LICENSE APPLICATION CONCEALING MATERIAL FACTS.

In the Matter of Disciplinary Proceedings against THE PROGRESSIVE DEMOCRATIC CLUB OF THE 8th WARD, CAMDEN, N.J. 1009 Ferry Avenue Camden, N. J.,

CONCLUSIONS AND ORDER

Holder of Club License CB-36, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

-----)

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

BY THE COMMISSIONER:

The defendant pleaded not guilty to charges alleging that (1) it failed to reveal in its license application that one Mark Perry was its treasurer; (2) it denied in its license application that any of its officers had been criminally convicted, whereas Mark Perry had been convicted of unlawful operation of a still and also bribery; (3) it falsely stated in its license application that it had been in active operation for three years prior to submitting said application; (4) it failed to reveal in its license application that Mark Perry was the real and beneficial owner of the licensed business; and (5) it permitted Mark Perry to exercise the privileges of its license.

Charges (3), (4) and (5) will be dismissed. While there is some evidence in the record on these charges, I find that it is not sufficiently convincing to justify a finding of guilt.

There is no question, however, concerning the defendant's guilt on charges (1) and (2). The explanation offered for failing to disclose Mark Perry as treasurer of the Club is that the application provided only three lines for answer to the pertinent question and, since the Club had four officers, it merely set forth the other three and omitted Perry's name entirely. It is more probable that Perry's criminal record, which includes the disqualifying crime of bribery, was the motivating cause for not including his name among those of the other officers. In any event, it is unnecessary to determine the quantum of the defendant's guilt on charges (1) and (2) since the license must be cancelled because of non-compliance with one of the essential requisites of a club licensee. Rule 4 of State Regulations No. 7 provides that "no license shall be issued to any club unless it shall have been in exclusive, continuous possession and use of a clubhouse or club quarters for at least three years continuously immediately prior to the submission of its application for a license."

Pursuant to a notice served upon the defendant in these proceedings directing it to show cause why its license should not be

cancelled because of its failure to comply with the cited rule, the defendant produced several witnesses. They testified that the defendant had been incorporated in May 1944, although the club had actually been in existence for three or four years before its incorporation. Prior to May 1944 the club met once a month at the homes of various of its members. As one of the members testified, "I let them use my basement."

It is clear that the "exclusive continuous possession" of club quarters for three years prior to June 1944, when the application for license was filed, is totally lacking in this case. Monthly meetings at the homes of "different members", as stated by the club president, is far from sufficient to meet the requirement of the regulation.

Under the circumstances, the license must be cancelled.

Accordingly, it is, on this 21st day of June, 1945,

ORDERED, that Club License CB-36, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to The Progressive Democratic Club of the 8th Ward, Camden, N. J., for premises 1009 Ferry Avenue, Camden, be and the same is hereby cancelled and declared null and void, effective at 2:00 a.m. June 25, 1945.

ALFRED E. DRISCOLL
Commissioner.

4. APPELLATE DECISIONS - IVOVICH, KING AND MILAT v. HOBOKEN.

FRANCES IVOVICH, THOMAS J.)
KING and MICHAEL J. MILAT,)

Appellants,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

BOARD OF COMMISSIONERS OF THE)
CITY OF HOBOKEN,)

Respondent)

Norman R. Wynne, Esq., Attorney for Appellants.
John J. Fallon, Esq., by Robert F. McAlevy, Esq.,
Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from respondent's action in suspending the appellants' license for a period of thirty days upon finding them guilty of permitting their licensed premises to be conducted in such manner as to become a nuisance. See Rule 5 of State Regulations No. 20.

The charge brought against the appellants contains three specific allegations of misconduct:

- (1) permitting one Vernal ---- to be introduced to servicemen;
- (2) permitting servicemen to purchase alcoholic beverages for Vernal ----; and

- (3) permitting Vernal ---- to take servicemen to a furnished room for the purpose of sexual relations.

Respondent's determination must be sustained, if at all, upon the testimony of the said Vernal ----, the only witness produced by the respondent to testify to the conditions existing at the licensed premises. From the stenographic transcript of the proceedings below, which has, by consent of both sides, been submitted in lieu of a formal hearing on this appeal, it appears that Vernal ---- came to this state during the first week of January, 1945. She has been married nineteen years and her husband has been in military service for the past three years.

Soon after her arrival in this state, she began to frequent the appellants' tavern some two or three evenings each week. Until the early part of March, she either came alone or with other female companions. Thereafter she came to the premises escorted by sailors until about the middle of March, after which time she did not patronize the tavern any further.

She states that she was introduced to a sailor on only one occasion by the bartender, voluntarily adding, however, "but I don't think he (the bartender) meant harm by doing it." She further testified that she had purchased her own drinks. She admits that she had sexual intercourse with one sailor.

On behalf of the appellants, the bartender denies that he had ever introduced Vernal ---- to a sailor or to anyone else. He states that she started to patronize the premises in January and, until the latter part of February, she was never accompanied by any men. He then observed that she would be escorted, on separate occasions, by at least three different sailors. When he called this to the attention of the licensees, it was decided that she should not be served any more. When she next visited the premises, the bartender informed her of the decision made by the appellants and refused to serve her and her companion. This occurred about the middle of March, and the bartender testified that she came in only once thereafter and was again refused service.

While Vernal --- admits that she did not visit the premises after the second week in March, she denies it was because she was requested to stay away. When asked for the reason for suddenly stopping to patronize the premises, she answered, "I just didn't feel like doing anything. I was sort of down. Just the way I felt."

It will serve no useful purpose to detail the evidence any further. Suffice it to say that I have carefully examined the entire record and fail to find any probative substantiation of the specific complaints made against the licensees. Although I am not unmindful of the problem presented in certain municipalities by the influx of unescorted women and servicemen and, while the local Board herein is to be commended for its stern insistence that licensed premises be properly conducted, licensees should not, in fairness, be penalized unless the proof is adequate to sustain a guilty finding. The lack of such proof in this case leaves me no alternative other than to reverse respondent's determination.

Accordingly, it is, on this 22nd day of June, 1945,

ORDERED, that respondent's action in finding the appellants guilty of the aforesaid charge and suspending their license for a period of thirty days, which suspension was stayed during the pendency of these proceedings, be and the same is hereby reversed.

ALFRED E. DRISCOLL
Commissioner.

5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS (PRIMARY ELECTION DAY), IN VIOLATION OF RULE 2 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

MICHAEL HRYCENKO
136 Pine Street
Jersey City 4, N. J.,

Holder of Plenary Retail Consumption License C-213, issued by the Board of Commissioners of the City of Jersey City.

CONCLUSIONS AND ORDER

Michael Hrycenko, Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that he sold at retail and delivered alcoholic beverages to a consumer and permitted the consumption of alcoholic beverages on his licensed premises on June 12, 1945, a Primary Election Day in this state, during the time the polls were open, in violation of Rule 2 of State Regulations No. 20.

It appears that on Primary Election Day investigators of this Department observed the licensee and another person in the licensee's premises. The other person appeared to be consuming a glass of beer. After the investigators were admitted the licensee, by his statement in writing, admitted that he had served this other person, who was not employed by him, three glasses of beer and received payment therefor.

I find defendant guilty as charged. The licensee has no other adjudicated record. I shall suspend the license for a period of fifteen days with a remission of five days because of the plea, leaving a net penalty of ten days. Cf. Re Pensick, Bulletin 669, Item 8.

Accordingly, it is, on this 22nd day of June, 1945,

ORDERED, that Plenary Retail Consumption License C-213, issued by the Board of Commissioners of the City of Jersey City to Michael Hrycenko, for premises 136 Pine Street, Jersey City, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. June 26, 1945; 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 1945-46 fiscal year, such license shall be under suspension until 2:00 a.m. July 6, 1945.

ALFRED E. DRISCOLL
Commissioner.

6. APPELLATE DECISIONS - NERI v. NORWOOD.

ALEXANDER NERI,)
)
 Appellant,)
)
 -vs-)
)
 BOROUGH COUNCIL OF THE BOROUGH)
 OF NORWOOD,)
)
 Respondent)
)

ON APPEAL
 CONCLUSIONS AND ORDER

 Dominick F. Pachella, Esq., Attorney for Appellant.
 Walter H. Jones, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial by respondent of an application for a plenary retail consumption license for premises located on Tappan Road, Borough of Norwood.

Respondent Board, in denying the application, stated that "The members of the governing body, after careful consideration, denied approving of a similar request for these premises on July 7, 1944. The Mayor and Council do not see any reason to change their opinion at this time.***" Among the reasons set forth in the resolution denying the previous application for a plenary retail consumption license and incorporated in and made part of the answer of respondent in the instant appeal, are the following: (a) two taverns are presently being operated in the same neighborhood; (b) the premises mentioned herein are located a short distance from a military camp; and (c) adequate policing of the premises would be difficult, if not impossible. The respondent further alleges that it is its policy to limit the number of liquor licenses because the Borough of Norwood has more licenses outstanding than its population warrants.

The appellant alleges in his petition of appeal that the action of respondent was erroneous because (a) the reasons assigned by the governing body were not sufficient in law or in fact to deny said license; (b) the premises in question have been used and are peculiarly adapted for the intended use; and (c) the denial of a license without proper justification would mean a great financial loss to appellant as the owner of said premises.

Appellant, at the hearing on the appeal, testified that he has been the owner of the premises in question since 1936. The premises, according to appellant, are located in a residential zone and consist of a two-story building, the first floor of which comprises a dining room, dance hall and bar. There were licenses issued to divers tenants of the premises from 1936 to 1943. The testimony by appellant regarding the prior licenses issued for the particular premises is corroborated by the Borough Clerk. J. V. Sposa, a Borough Councilman, testified that there was no application for a license for the premises during the 1943-44 period but an application was filed by one Fitzpatrick in June 1944 for the ensuing year. This application was denied for the reasons previously mentioned. Appellant further testified that various people assured him that they would patronize his place of business if he obtained a liquor license. Appellant avers, however, that he expected most of his potential patrons to be transients who happened to be using the highway en route to New York. No other witnesses were produced by appellant.

J. A. Collins, a Councilman, testified that the Borough Council disapproved of an additional liquor license because there was no need or necessity for its issuance. He stated that four of the six outstanding plenary retail consumption licenses are operated on Tappan Road and that two of these premises are in the immediate vicinity of the appellant's proposed place of business. He further testified that, because the premises in question are situated on a plot of ground elevated from the highway and because the entrance to the building is in the rear thereof, proper police supervision would be difficult. Councilman J. V. Sposa, by stipulation of the parties herein, corroborated Councilman Collins' testimony. The official 1940 census discloses that the Borough of Norwood had a population of 1512 persons at that time. Mr. Collins stated that there are approximately 1600 people residing in the Borough of Norwood at the present time.

The issue on an appeal from the denial of an application for a consumption license is not to be confused with the issues raised on an appeal from a revocation of a license, or the refusal to grant a transfer, or the refusal to grant an application for the renewal of a license. The question to be decided in an appeal such as this is whether the application was denied in the reasonable exercise of a proper discretion and in good faith. Within the State of New Jersey no one has a right to demand a license. A license to sell alcoholic beverages is a special privilege granted to the few and denied to the many. Cf. Bumball v. Burnett, 115 N. J. L. 254. The neighborhood wherein the licensed premises are located is residential in character. The uncontradicted testimony of Councilman Collins discloses that there are two licensees in the immediate vicinity of the premises in question and that there are licensees in an adjacent community not far from the appellant's premises. Mr. Collins also testified that, because a military camp is situated about a mile and a half from the appellant's building and because the local police force lacks personnel to supervise properly the establishment, he and the other Councilmen agreed that it was in the best interests of the Borough to refrain from issuing additional licenses. The fitness of appellant is not in issue in the instant appeal.

Prior use as a tavern does not per se warrant the issuance of a liquor license for said premises. Re Kenosky, Bulletin 217, Item 7. Appellant's contention is that he would suffer great financial loss if a license were not granted to him. In a conflict between private interests and the interests of the community at large, the latter must prevail. Re Lingelbach v. North Caldwell, Bulletin 180, Item 8.

In view of the facts adduced at the instant hearing, it is quite obvious that the denial of the application by the local issuing authority was not arbitrary or unreasonable. The action of respondent is therefore affirmed.

Accordingly, it is, on this 25th day of June, 1945,

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

ALFRED E. DRISCOLL
Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS (PRIMARY ELECTION DAY), IN VIOLATION OF RULE 2 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

ARISTOTELIS PAPAGEORGE
2816½ Hudson Boulevard
Jersey City 6, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution License D-52, issued by the Board of Commissioners of the City of Jersey City.

William E. Sewell, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant, the holder of a plenary retail distribution license, pleaded non vult to a charge alleging that he sold and delivered alcoholic beverages to consumers on his licensed premises on June 12, 1945, a Primary Election Day in this State, during the time the polls were open, in violation of Rule 2 of State Regulations No. 20.

It appears that on Primary Election Day, between 11:15 and 11:45 a.m., investigators of the Department of Alcoholic Beverage Control observed what they believed to be suspicious activity in the delicatessen store wherein the defendant operates his plenary retail distribution business. Upon entering the premises, one of the investigators asked for a bottle of wine. After some hesitancy and apparently after attempting to identify the investigator as a neighborhood customer, defendant's wife sold the wine to the investigator. The investigators later observed another person leaving the premises with three bottles of beer.

The licensee and his wife, who both were working in the premises at the time, admitted that the alcoholic beverages had been sold and delivered as stated and, while the actual sales were made by the wife, there is no attempt by the licensee to evade his full responsibility for the acts of his agents.

The licensee has no other adjudicated record. I shall suspend the license for a period of fifteen days, with a remission of five days because of the plea, leaving a net penalty of ten days. Cf. Re Pensick, Bulletin 669, Item 8.

Accordingly, it is, on this 25th day of June, 1945,

ORDERED, that Plenary Retail Distribution License D-52, issued by the Board of Commissioners of the City of Jersey City to Aristotelis Papageorge, for premises 2816½ Hudson Boulevard, Jersey City, be and the same is hereby suspended for the balance of its term, effective at 9:00 a.m. June 29, 1945; 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 1945-46 fiscal year, such license shall be under suspension until 9:00 a.m. July 9, 1945.

ALFRED E. DRISCOLL
Commissioner.

8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A MINOR, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 60 DAYS.

In the Matter of Disciplinary Proceedings against)

MICHAEL LANEVE)
17 Ellison Street)
Paterson 1, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-343, issued by the Board of Alcoholic Beverage Control of the City of Paterson.)
-----)

Samuel L. Biber, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to charges alleging the sale of alcoholic beverages to a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The reported events disclose the service of two glasses of beer to a nineteen-year-old minor on May 1, 1945, an offense which, since not aggravated, would merit the normal penalty of ten days.

On three prior occasions, however, the defendant's license has been suspended by the local authorities. In June 1936 he received a three-day suspension for violating an Election Day curfew. In February 1939 he served two days because of an improperly labeled beer tap. In May 1943 he was penalized fifteen days because of selling alcoholic beverages to minors. In addition, in February 1943, I cautioned the defendant about permitting "minors to congregate" on his premises and gave notice that he would be held "strictly accountable for any violations which may occur" at his tavern.

In view of this background, an outright revocation of the license would not be unnecessarily severe, especially since the last two violations involve similar charges of sales to minors subsequent to my warning. The facts attending the instant offense, however, do not appear to be aggravated. Cf. Re Martins, Inc., Bulletin 666, Item 14. Moreover, the first suspension received by the defendant happened some nine years ago and the second more than six years ago. A consideration of all these circumstances leads to the imposition of a sixty-day penalty.

One further thought. It is difficult to envisage how a revocation of the defendant's license can be avoided in the event of a subsequent infraction of the law.

Accordingly, it is, on this 26th day of June, 1945,

ORDERED, that Plenary Retail Consumption License C-343, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Michael Laneve, for premises 17 Ellison Street, Paterson, be and the same is hereby suspended for the balance of its term, effective at 3:00 a.m. June 30, 1945; and it is further

ORDERED, that if any license be issued to this licensee, or other person, for the premises in question, for the 1945-46 fiscal year, such license shall be under suspension until 3:00 a.m. August 29, 1945.

ALFRED E. DRISCOLL
Commissioner.

9. APPELLATE DECISIONS - TUSAY v. TRENTON.

JOHN TUSAY, Administrator of the
Estate of Stephen Tusay, deceased,)

Appellant,)

-vs-

BOARD OF COMMISSIONERS OF THE
CITY OF TRENTON,)

Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

William A. Moore, Esq., Attorney for Appellant.
Louis Josephson, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of application for the transfer of License C-272 from premises known as 1202 Anderson Street to premises known as 1122 Anderson Street, Trenton.

The appeal has been submitted upon an agreed statement of facts in accordance with Rule 8 of State Regulations No. 15.

It appears from the statement of facts that the resolution to grant the transfer failed of adoption under the same circumstances and for the same reasons set forth in Wasko v. Trenton, Bulletin 671, Item 1.

For the reasons set forth in the Wasko case, I must reverse the action of respondent in denying the transfer sought by appellant herein.

Accordingly, it is, on this 26th day of June, 1945,

ORDERED, that the action of respondent in denying the transfer be and the same is hereby reversed. Respondent is directed to issue the transfer as applied for, subject to the approval of the premises at 1122 Anderson Street by the local health, safety and building authorities.

ALFRED E. DRISCOLL
Commissioner.

10. DISCIPLINARY PROCEEDINGS - CHARGE OF ACCEPTING FOOD STAMPS IN EXCHANGE FOR ALCOHOLIC BEVERAGES, IN VIOLATION OF RULE 23 OF STATE REGULATIONS NO. 20, DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against)

MORRIS NEWMAN)
200 West Kinney Street)
Newark, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-110 for the fiscal year 1942-43, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
-----)

Simon Fisch, Esq. and Irving Mandelbaum, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to a charge alleging that:

"On or about November 29, 1942 and on or about December 11, 1942 you accepted orange food stamps issued by the Surplus Marketing Administration of the United States Department of Agriculture, from Chedrick Freeman, in full or partial payment and in exchange for alcoholic beverages, in violation of Rule 23 of State Regulations No. 20."
(See Bulletin 441, Item 3.)

At the time of the alleged violations, defendant's place of business was known as "Newman's Market." Different sections of his market were devoted to the sales of groceries, vegetables, meats, liquors, cigars and soda.

On November 29, 1942 Chedrick Freeman, who was then unemployed, met by previous arrangement a special agent of the United States Department of Agriculture and two members of the Newark Police Department. The agent and police officers searched Freeman's pockets to satisfy themselves that he had no money, and the agent then gave Freeman four orange food stamps. When the entire party arrived in the vicinity of Newman's Market, Freeman entered the market alone and the others remained outside in a parked automobile. Shortly thereafter Freeman returned to the automobile and stated that he had purchased a pint of wine from Mr. Newman in exchange for two of the orange food stamps.

Substantially the same procedure was followed on the evening of December 11, 1942.

There is no doubt that Newman received at least two of the orange food stamps which had been handed to Freeman, and there is no doubt that on both occasions Freeman purchased a pint of wine in defendant's premises.

Defendant's witnesses all deny that on either occasion Freeman received wine in exchange for food stamps. Isaac Greenberg testified that, on November 29, 1942, he was in charge of the liquor counter in defendant's store and that he sold Freeman a bottle of wine for twenty-five cents cash. Three other witnesses, who testified that they were in defendant's store on November 29, 1942, said that they saw Freeman exchange something with another patron before he approached the liquor counter, the possible inference from this testimony being that he may then have exchanged the food stamps for cash before making the purchase of wine. The licensee himself testified that, on the evening of December 11, 1942, he sold Freeman a pint of wine and that, at the time of this sale, Freeman stooped down and took a quarter from his shoe. Both Greenberg and the licensee testified that they had never sold alcoholic beverages in exchange for food stamps, and the licensee testified that no food stamps had ever been placed in the cash register located in the liquor department of the premises.

In this case I am required to determine exactly what happened on each occasion after Freeman entered the defendant's premises. Freeman has a criminal record, and his story as to events which took place inside defendant's store is uncorroborated. There is some further evidence that he had not been on friendly terms with the defendant-licensee. On the other hand, I am not impressed with the veracity of the story told by some of defendant's witnesses, particularly with respect to the alleged exchange of stamps for money on the occasion of the first visit. However, after considering all the testimony, there remains a serious doubt in my mind as to whether or not the Department has sustained the burden of proving the guilt of the defendant-licensee. Accordingly, I shall give the defendant the benefit of the doubt and dismiss the charge.

Accordingly, it is, on this 26th day of June, 1945,

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

ALFRED E. DRISCOLL
Commissioner.

11. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.

In the Matter of Disciplinary Proceedings against)
 HUBERT BOURNIQUE)
 T/a THE CAVE)
 Route 29)
 Union, N. J.,)
 Holder of Plenary Retail Consumption License C-41 for the fiscal year 1944-45 and C-44 for the fiscal year 1945-46, issued by the Township Committee of the Township of Union.)

CONCLUSIONS
AND ORDER

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

BY THE COMMISSIONER:

A non vult plea was entered by the defendant to a charge alleging that he possessed on his licensed premises two bottles of alcoholic beverages, the contents of which were not genuine as labeled.

On May 26, 1945 a Federal ATU agent seized at the defendant's tavern a bottle of "Seagram's 5 Crown Blended Whiskey" and a bottle of "Ancient Age Straight Bourbon Whiskey." Chemical analysis substantiated the agent's belief that both bottles contained alcoholic beverages not genuine as labeled.

In the absence, as here, of any previous record or aggravating circumstances attending the offense, the usual ten-day suspension will be imposed.

Accordingly, it is, on this 27th day of June, 1945,

ORDERED, that Plenary Retail Consumption License C-44, issued for the fiscal year 1945-46, by the Township Committee of the Township of Union to Hubert Bournique, t/a The Cave, for premises Route 29, Union, be and the same is hereby suspended for a period of ten (10) days, commencing at 6:00 a.m. July 3, 1945, and terminating at 6:00 a.m. July 13, 1945.

ALFRED E. DRISCOLL
Commissioner.

12. DISCIPLINARY PROCEEDINGS - PERMITTING PIN BALL MACHINE ON LICENSED PREMISES, IN VIOLATION OF RULE 7 OF STATE REGULATIONS NO. 20. - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
CARTERET CLUB OF TRENTON
333 West State Street
Trenton, N. J.,
Holder of Club License CB-20,
issued by the Board of Commissioners
of the City of Trenton.

CONCLUSIONS
AND ORDER

Carteret Club of Trenton, by Harvey S. Moore, Chairman of House Committee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult to the following charge:

"On April 27, 1945 you possessed and allowed, permitted and suffered on and about your licensed premises a machine or device commonly known as a bagatelle or pinball machine, in violation of Rule 7 of State Regulations No. 20."

The departmental file discloses that, on April 27, 1945, an investigator of the Department of Alcoholic Beverage Control observed the pinball machine in question on defendant's licensed premises. The manager in charge claimed that he did not know that it was a violation to have a pinball machine on or about the licensed premises and immediately made arrangements for its removal.

The licensee has no previous adjudicated record. I shall, therefore, suspend its license for ten days, less five days for the non vult plea entered herein, or a net suspension of five days.
Re Recreation and Amusement Unit, Inc., Bulletin 666, Item 10.

Although this proceeding was instituted during the 1944-45 licensing period, it does not abate but remains fully effective against the renewal license for the fiscal year 1945-46. State Regulations No. 16.

Since the institution of these proceedings, the clerk of the local issuing authority has advised that the correct license number issued to defendant herein for the 1944-45 licensing period was CB-16 instead of CB-20.

Accordingly, it is, on this 27th day of June, 1945,

ORDERED, that Club License CB-16, as renewed for the fiscal year 1945-46, issued by the Board of Commissioners of the City of Trenton to the Carteret Club of Trenton, for premises 333 West State Street, Trenton, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 a.m. July 8, 1945, and terminating at 2:00 a.m. July 13, 1945.

ALFRED E. DRISCOLL
Commissioner.

13. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary Proceedings against)

JOSEPH and HELEN KARBA)
280 1/2 Ferry Street)
Newark 5, N. J.,)

CONCLUSIONS AND ORDER

-----)
Holders of Plenary Retail Consumption License C-551 for the fiscal year 1944-45 and now holders of Plenary Retail Consumption License C-551 for the current (1945-46) fiscal year, both issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
-----)

Joseph and Helen Karba, Defendant-licensees, Pro se.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensees plead non vult to a charge alleging that, on or about June 12, 1945, they possessed four 4/5 quart bottles labeled "Carstairs White Seal Blended Whiskey", which bottles contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

The departmental file discloses that on Primary Election Day, June 12, 1945, at 7:00 p.m., an ABC agent, accompanied by a municipal detective, discovered the rear door of the licensees' premises partly open. Upon entering the establishment they observed Joseph Karba, one of the licensees, refilling three bottles labeled "Carstairs White Seal Blended Whiskey" with whiskey taken from a bottle marked "Cooperage Brand Reserve Blended Whiskey 80.6 Proof."

An additional full bottle labeled "Carstairs White Seal Blended Whiskey", containing "Cooperage Brand Reserve Blended Whiskey 80.6 Proof", was also seized.

At the time of the seizure, defendant Joseph Karba admitted in a signed statement that he had a small quantity of "Carstairs" whiskey on hand but had an abundance of "Cooperage" whiskey because there is little demand for the latter brand.

Defendants have no previous adjudicated record. However, where licensees, as indicated herein, perform or authorize or acquiesce in the "refill", the penalty must and will be severe. Re Dilzer, Bulletin 585, Item 4. I shall, therefore, suspend the license for a period of twenty days. Re Kuremsky, Bulletin 602, Item 2.

Although this proceeding was instituted during the 1944-45 licensing period, it does not abate but remains fully effective against the renewal license for the fiscal year 1945-46. State Regulations No. 16.

Accordingly, it is, on this 29th day of June, 1945,

ORDERED, that Plenary Retail Consumption License C-551, for the fiscal year 1945-46, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Joseph and Helen Karba for premises 280½ Ferry Street, Newark, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. July 5, 1945, and terminating at 2:00 a.m. July 25, 1945.

Alfred E. Driscoll
Commissioner.