

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

BULLETIN 786

DECEMBER 9, 1947.

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

BULLETIN 786

DECEMBER 9, 1947.

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BY CLUB LICENSEE TO NON-MEMBERS IN VIOLATION OF RULE 8 OF STATE REGULATIONS NO. 7 - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

VILLOTTO RIGGIN POST #67)
AMERICAN LEGION, INC.)
Grove Street & Clinton Place)
East Rutherford, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Club License CB-32 issued by the State Commissioner of Alcoholic Beverage Control.)
-----)

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

BY THE COMMISSIONER:

Defendant pleads non vult to charges alleging sale of alcoholic beverages to persons not members of its club or bona fide guests of such members, in violation of Rule 8 of State Regulations No. 7.

The Department file discloses that on October 11, 1947, two ABC agents entered the licensed premises and were served alcoholic beverages. Neither agent was interrogated by the person in charge as to whether he was a member or guest of a member of the defendant club. Club licensees must scrupulously obey the law respecting sales to non-members. Failure to do so warrants imposition of severe penalties for violations of this character.

Defendant has a previous adjudicated record. Effective February 24, 1947, defendant's license was suspended for a period of fifteen days as a result of its plea of non vult to charges of sale of alcoholic beverages to persons other than bona fide members and their bona fide guests, and also for permitting tickets and participation rights in a lottery to be sold and offered for sale on and about its licensed premises. See Villotto Riggin Post, Bulletin 750, Item 9.

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

Accordingly, it is, on this 20th day of November, 1947,

ORDERED that Club License CB-32, issued by the State Commissioner of Alcoholic Beverage Control to Villotto Riggin Post #67, American Legion, Inc., for premises at Grove Street and Clinton Place, East Rutherford, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. November 28, 1947, and terminating at 2:00 a.m. December 23, 1947.

ERWIN B. HOCK
Commissioner.

2. APPELLATE DECISIONS - HALL v. MOUNT EPHRAIM.

Case #1)
 LENA HALL,)
)
 Appellant,)
)
 -vs-)
)
 BOARD OF COMMISSIONERS OF THE)
 BOROUGH OF MOUNT EPHRAIM,)
)
 Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

-----)
 Case #2)
 LENA HALL,)
)
 Appellant,)
)
 -vs-)
)
 BOARD OF COMMISSIONERS OF THE)
 BOROUGH OF MOUNT EPHRAIM,)
)
 Respondent.)

-----)
 Arthur W. Lewis, Esq., by Donald R. Taggart, Esq., Attorney for)
 Appellant.)
 George D. Rothermel, Esq., Attorney for Respondent.)

BY THE COMMISSIONER:

Appellant appeals in Case No. 1 from the action of respondent, taken on June 27, 1947, whereby respondent denied her first application for renewal of her plenary retail consumption license for the present fiscal year.

Appellant appeals in Case No. 2 from the action of respondent, taken on July 22, 1947, whereby respondent denied her second application for renewal of her plenary retail consumption license for the present fiscal year.

The premises in question are located on the southwest corner of Black Horse Pike and Kings Highway, Mount Ephraim.

In Lena Hall, Executrix v. Mount Ephraim, Bulletin 750, Item 1, the action of respondent in denying application for renewal of the license for the 1946-47 fiscal year was reversed and respondent was ordered to issue a plenary retail consumption license as applied for. The order therein was dated February 14, 1947. The license was issued on February 19, 1947. The license was transferred to Lena Hall, individually, on June 27, 1947. It is admitted that the privileges conferred by the 1946-47 license were not exercised at any time by Lena Hall, either in her capacity as executrix or individually.

Case No. 1 may be disposed of briefly. The first application for renewal described the premises as a "brick and frame" building. The premises thus described were not the same premises covered by the expiring license. Hence respondent correctly ruled that the application could not be considered as an application for a renewal of a license. R. S. 33:1-96 (as amended by P.L. 1944, ch. 187). The action of respondent taken on June 27, 1947 will be affirmed.

Case No. 2 concerns denial of the second application which was filed on July 8, 1947. In the second application the premises are described as a "metal and frame" building and do describe the same premises covered by the license which expired June 30, 1947. The minutes of the meeting of the Board of Commissioners, held on July 22, 1947, show that the second application was denied "on the ground that

the license which had been issued for the period which ended June 30th, 1947, had never been used."

At the hearing, the testimony showed that litigation concerning the will of Claude R. Hall had terminated on April 5, 1947. The fact that this litigation was pending could have been the reason why Lena Hall, Executrix, did not attempt to exercise the privileges of the license between February 19, 1947 and April 5, 1947. However, no evidence was offered to show why she failed to operate after the latter date. I am inclined to believe from the record that she never had any intention of operating at the old premises because it appears that she has had plans drawn but not submitted for an enlarged building of a different type, which she described in her first application filed for "renewal".

Mere non-user will not, of itself, void a license. See Tarantola, Bulletin 570, Item 5. It has also been held that a representative of an estate should have a reasonable opportunity to close the estate. Beebe v. Glassboro, Bulletin 621, Item 7; Nunziato v. Matawan, Bulletin 732, Item 11. However, it is not my belief that a municipal issuing authority should be required by the State Commissioner to renew a license under which no business has been conducted for a protracted period and where convincing evidence in explanation and justification of non-user is not adduced. No one is entitled to a renewal of a license as a matter of right. Zicherman v. Driscoll, 135 N.J.L. 586.

Under all the circumstances of this case I cannot say that the respondent acted in an arbitrary or unreasonable manner and, hence, I shall affirm the action of respondent taken on July 22, 1947.

Accordingly, it is, on this 20th day of November, 1947,

ORDERED that the actions of respondent in both cases be and the same are hereby affirmed, and the appeals herein be and the same are hereby dismissed.

ERWIN B. HOCK
Commissioner.

3. DISCIPLINARY PROCEEDINGS - HINDERING INVESTIGATION - CHARGE OF PERMITTING FEMALE EMPLOYEE TO ACCEPT BEVERAGES AT EXPENSE OF PATRON DISMISSED - RULE 22 OF STATE REGULATIONS NO. 20 CONSTRUED - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA

In the Matter of Disciplinary Proceedings against)

AGNES & MICHAEL J. MALEK)
T/a GEORGE'S TAVERN)
1030 South Broad Street)
Trenton 10, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-218, issued by the Board of Commissioners of the City of Trenton.)

John A. Brieger, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendants pleaded non vult to charges alleging that Agnes Malek, one of the licensees, (1) hindered an ABC investigation, in violation of R. S. 33:1-35, and (2) accepted drinks at the expense of patrons, in violation of Rule 22 of State Regulations No. 20.

On September 29, 1947, an ABC agent entered the defendants' tavern and identified himself to Agnes Malek, one of the licensees and partner of Michael J. Malek, her son. Immediately upon learning the identity of the agent, Agnes Malek ran behind the bar and, snatching a bottle from the back bar, hurried to the service room. The agent followed her and wrested the bottle from her. She then attempted to regain possession of the bottle by force, becoming very abusive and violent and keeping up a stream of invective against the agent. When she realized that the agent was determined to keep the bottle, she resorted to threats of bodily injury, shouting that she would get a knife. It was only after the agent had called for assistance from the local police that she quieted down.

The bottle in question had been refilled by Agnes Malek and contained a non-alcoholic concoction of root beer and ginger ale. She explained that she was a woman of advanced years, being almost sixty years of age, and that her physical condition would not permit her to consume any alcoholic beverages. When, on occasion, a patron sought to treat her, she would pour a drink from the bottle and charge twenty cents for it.

Despite the plea, the second charge will be dismissed. Rule 22 of State Regulations No. 20 reads:

"No plenary or seasonal retail consumption licensee shall allow, permit or suffer any female employed on the licensed premises to accept any food or beverage, alcoholic or otherwise, at the expense of or as a gift from any customer or patron."

This rule was designed primarily to outlaw the "hostess" racket. It was intended to eliminate the reprehensible practice of permitting females to entice male customers and solicit them for drinks and food. In an attempt to forestall effectively any such practices, the rule advisedly contains language sufficiently broad to prohibit any female employed on licensed premises from accepting food or beverages at the expense of any customer or patron.

In the instant matter, it appears that the extent of the licensee's acceptance of a drink, with no evidence of any solicitation or other objectionable activity of that nature, was limited to those infrequent occasions when, in a spirit of conviviality and good fellowship, she was urged to do so by a patron and, presumably, would then reciprocate with one "on the house". Kept within these limits and confined to those isolated times when the spirit impels, there is no objection, as former Commissioner Burnett said, to "a drink on the house, now and then," (Re Lipitz, Bulletin 372, Item 2), whether the reciprocating licensee be a male or female.

This is not to say, however, that the reuse of the liquor bottle filled with a soft beverage, with the implied representation that the colored liquor contained therein was an alcoholic beverage, irrespective of the small charge made, is to be condoned. On the contrary, this factor forms a pertinent part of the background of the allegation of hindering an investigation, contained in the first charge, and serves to aggravate the seriousness of that offense. All things considered, including the absence of any prior record, I shall suspend the license for a period of thirty days, less five for the plea, leaving a net penalty of twenty-five days.

Accordingly, it is on this 21st day of November, 1947,

ORDERED that Plenary Retail Consumption License C-218, issued by the Board of Commissioners of the City of Trenton to Agnes & Michael J. Malek, t/a George's Tavern, 1030 South Broad Street, Trenton, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 2:00 a.m. November 25, 1947, and terminating at 2:00 a.m. December 20, 1947.

ERWIN B. HOCK
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS - PRIOR RECORD - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against
HAROLD J. FUCCILE
T/a CHAT-A-WAY INN
S/S Route 40
Lakehurst, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-3 for the 1946-47 and 1947-48 licensing years, issued by the Borough Council of the Borough of Lakehurst.

Robert J. Novins, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded not guilty to charges that (1) he sold alcoholic beverages to minors, in violation of R. S. 33:1-77 and (2) he sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages at his licensed premises to said minors and permitted the consumption thereof by said minors, in violation of State Regulations No. 20, Rule 1.

Three minors, members of the United States Navy, then stationed at the Naval Air Station, Lakehurst, N. J., were originally mentioned in these charges. However, due to exigencies of the service, one of

the minors was not available for the hearing and on motion of the Department the charge as to the one said minor was nolle prossed.

The evidence shows that the remaining two minors, Seaman l/c Gordon ---, and Seaman l/c Jimmy ---, who were both 19 years of age, were in the licensed premises on May 21, 1947 and were served beverages. They (the minors) insist that they were served several glasses of beer. An adult sailor who entered the licensed premises with Gordon --- on May 21, 1947 testified that he "bought" Gordon a beer and that Gordon "bought" a second round, and that Gordon consumed both beers. He also testified that on another visit to defendant's premises he observed Jimmy --- consume beer and whiskey.

Two bartenders, employees of the licensee, one a man, the other a woman, were identified by the minors as the persons who had sold and served them the alcoholic beverages. The licensee claims that he did not see the sales or service, that he made extraordinary efforts to see that minors are not served, and that one of the minors and the adult sailor witness have a grudge against him. The two bartenders deny any service except that of "cokes". Four other witnesses, patrons of the licensee, all testify that they did not observe any sale or service to, or any consumption of alcoholic beverages by either of the minors.

I can see no reason to disbelieve the testimony of the minors and their sailor companion, nor can I find any real evidence that their testimony or any part of it was flavored by a desire for revenge. The bartenders' testimony is merely negative, self-serving and entitled to little, if any, consideration. I do not doubt that the four patrons may have failed to see the violation on May 21, 1947, but it is obvious that they did not see all that occurred on the licensed premises on the occasion in question. The minors were on the licensed premises for at least one hour.

I find that the two minor sailors were, in fact, at least permitted to consume the alcoholic beverages as charged. This is sufficient for a verdict of guilt. Re Essex Holding Corp., Bulletin 727, Item 3.

The licensee has a prior record. In 1943 his license, then held with a partner, was suspended for ten days on a plea of non vult to charges alleging the possession of a refilled bottle of alcoholic beverages on his licensed premises, and in 1946 his license was suspended for ten days by the local issuing authority for sales to minors. In view of these two prior convictions, one for a similar violation, I shall suspend the license for twenty-five days.

Although this proceeding was instituted during the licensing year 1946-47, it does not abate but remains fully effective against the renewal license for the licensing year 1947-48. State Regulations No. 16.

Accordingly, it is, on this 21st day of November, 1947,

ORDERED that Plenary Retail Consumption License C-3, issued for the 1947-48 licensing year by the Borough Council of the Borough of Lakehurst to Harold J. Fuccile, t/a Chat-A-Way Inn, s/s Route 40, Lakehurst, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 2:00 a.m. November 28, 1947, and terminating at 2:00 a.m. December 23, 1947.

ERWIN B. HOCK
Commissioner.

5. DISCIPLINARY PROCEEDINGS - FRONT -- AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against)
LEONARD F. BRUNO)
T/a. THIRD AVE. HOTEL & BAR)
27-29 Third Avenue)
Long Branch, N. J.,)

Holder of Plenary Retail Consumption License C-22 for the fiscal year 1947-48, issued by the Board of Commissioners of the City of Long Branch, and transferred during the pendency of these proceedings to)
FRANK RUBINO and LEONARD F. BRUNO,)
T/a THIRD AVENUE HOTEL & BAR.)

CONCLUSIONS AND ORDER

A. Henry Giordano, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to the following charges:

"1. In your application dated May 28, 1947, filed with the Board of Commissioners of Long Branch, upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question 30, which asks: 'Has any individual..., other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?', whereas in truth and fact Frank Rubino had such an interest in that he was co-owner with you of the said business; such false statement being in violation of R. S. 33:1-25.

"2. From October 9, 1946 until the present time, you knowingly aided and abetted Frank Rubino to exercise, contrary to R. S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses, thereby yourself violating R. S. 33:1-52."

On October 9, 1946, Leonard F. Bruno and Frank Rubino, his father-in-law, acquired the licensed business. The license, however, was taken in the sole name of Leonard F. Bruno and was subsequently renewed in his name for the current licensing period. Both persons appear to be qualified to be associated with the alcoholic beverage industry. Frank Rubino stated that at the time the purchase of the business was contemplated he made application for a transfer of the license but no action was taken for a period of three to four weeks by the local issuing authority. Rubino and Bruno then agreed that the latter would make application and that he would operate the business in his name. This plan was carried out although it is admitted that both Rubino and Bruno had and have a financial interest in the liquor establishment.

On November 4, 1947, the license was transferred from Leonard F. Bruno to Frank Rubino and Leonard F. Bruno, as partners. Although a proper correction appears to have been made, the nature of the violation heretofore committed warrants a suspension of the license. I shall, therefore, suspend the license for a period of twenty days. Re Russo, Bulletin 741, Item 4.

Accordingly, it is, on this 21st day of November, 1947,

ORDERED that Plenary Retail Consumption License C-22, originally issued by the Board of Commissioners of the City of Long Branch to Leonard F. Bruno, t/a Third Ave. Hotel & Bar, for premises 27-29 Third Avenue, Long Branch, and transferred during the pendency of these proceedings to Frank Rubino and Leonard F. Bruno, t/a Third Avenue Hotel & Bar, for the same premises, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. December 3, 1947, and terminating at 2:00 a.m. December 23, 1947.

ERWIN B. HOCK
Commissioner.

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

In the Matter of Disciplinary Proceedings against)

LILLIAN CASRIEL and)
FRIEDA H. SPIELFOGEL)
217 Third Avenue)
Asbury Park, N. J.,)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption License C-66, issued by the City Council of the City of Asbury Park.)

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

BY THE COMMISSIONER:

Defendants have pleaded non vult to a charge alleging that they possessed on their licensed premises a "bagatelle or pin ball" machine, in violation of State Regulations No. 20, Rule 7.

An ABC agent observed the machine in the hotel lobby, admittedly a part of the licensed premises. It was allegedly permitted on the licensed premises because the licensees did not know such a machine was prohibited thereon. The language of the Rule is clear and ignorance of the provisions of the State Regulations cannot be accepted as an excuse.

Defendants have no prior record. I shall suspend their license for ten days, Re Carteret Club of Trenton, Bulletin 672, Item 12, and remit five days because of the plea.

Accordingly, it is, on this 24th day of November, 1947,

ORDERED that Plenary Retail Consumption License C-66, issued by the City Council of the City of Asbury Park to Lillian Casriel and Frieda H. Spielfogel, for premises 217 Third Avenue, Asbury Park, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 a.m. December 1, 1947, and terminating at 2:00 a.m. December 6, 1947.

ERWIN B. HOCK
Commissioner.

7. APPELLATE DECISIONS - REIER v. PASSAIC AND MIHAL.

SAUL REIER,)
)
 Appellant,)
)
 -vs-)
)
 BOARD OF COMMISSIONERS OF THE)
 CITY OF PASSAIC, and NICHOLAS)
 MIHAL, trading as MIHAL'S CAFE,)
)
 Respondents)

ON APPEAL
CONCLUSIONS AND ORDER

-----)
 Benjamin Weiss, Esq., Attorney for Appellant.
 Thomas E. Duffy, Esq., Attorney for Respondent Board of Commissioners.
 Nicholas Mandak, Esq., Attorney for Respondent Nicholas Mihal.

BY THE COMMISSIONER:

Appellant appeals from the action of respondent Board whereby it transferred Plenary Retail Consumption License C-132 held by respondent Nicholas Mihal from 106 President Street to 154 Market Street, Passaic.

Appellant, who conducts a shoe business on Market Street, alleges that the action of respondent Board was erroneous because the deciding vote was cast by Commissioner Nicholas Martini.

There is no dispute as to the facts. Michael Martini and Josephine Martini, his wife, who are the parents of Commissioner Nicholas Martini, are the owners of premises known as 154 Market Street. Respondent Nicholas Mihal has entered into a contract with the present owners whereby he agreed to purchase the premises known as 154 Market Street. It has been stipulated that said contract contains a provision that the sale of the building is contingent upon the acquiescence of the Board of Commissioners in granting the transfer of the license. When the application for transfer was presented to the Board, two members voted in favor of granting the application; two members voted against granting the application, and the deciding vote in favor of granting the application was cast by Commissioner Nicholas Martini.

In Downes v. South Amboy, 116 N.J.L. 511, the Court said:

"There is, however, another legal principle which must be considered. It may be argued that the Common Council, *** in weighing the advantages to many and the inconveniences to some, was engaged in a quasi-judicial act; and upon that hypothesis, arises one of the fundamental maxims of law, that no man can be judge in his own case."

The principle set forth above is well established in law. Stroud v. Consumers Water Co., 56 N.J.L. 422; Harrison v. Elizabeth, 70 N.J.L. 591; Wiesenthal v. Atlantic City, 73 N.J.L. 245; Sturr v. Elmer, 75 N.J.L. 443; Cordingley v. Mendham, 12 N.J. Misc. 331.

The same principle has been followed in numerous decisions and rulings made by the Commissioner. Re Kener, Bulletin 298, Item 9, and cases therein cited. These cases hold that, where the premises sought to be licensed are owned by a member of the municipal license issuing authority, or leased by him and sub-leased to the proposed licensee, such member is disqualified from participating in any alcoholic beverage matters coming before the Board. The ruling likewise applies to a member of the municipal license issuing authority who is also director of a bank owning the licensed premises (Re Reichenstein, Bulletin 144, Item 2) and to cases where such member is interested in the wholesaling or retailing of alcoholic beverages (Re Gnichtel, Bulletin 80, Item 7; DeCicco and Rula v. Manville, Bulletin 467, Item 1).

No evidence has been presented, however, which would indicate that any of the rulings set forth above applies to the facts of the present case. Commissioner Martini has no present interest in the premises owned by his father and mother, and the possibility that he might at some future time acquire such an interest cannot legally affect the legality of his action in passing upon the application for transfer. Cf. Fredericks v. Wanaque, 95 N.J.L. 165. The precise question in issue was presented in Re Simmill, Bulletin 76, Item 2, wherein the Commissioner ruled:

*** It may well be suggested that where a councilman's mother owns premises which are sought to be licensed, he should not vote on the application in order to avoid the suggestion of partiality. However, in legal contemplation, the blood relationship does not of itself create any interest in the application. Consequently, the ownership, by a mother of a councilman, of premises sought to be licensed does not disqualify such councilman from voting on the application provided he has actually no interest in the premises or in the business to be conducted under the license."

I believe that the above ruling is correct and directly in point. I shall, therefore, affirm the action of respondent Board of Commissioners.

Accordingly, it is, on this 25th day of November, 1947,

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

ERWIN B. HOCK
Commissioner.

8. APPELLATE DECISIONS - FRIEDMAN v. EAST NEWARK ET AL. - SUPPLEMENTAL ORDER RE SCOTT AND COLTRE.

MOLLIE FRIEDMAN,)
Appellant,)
-vs-)
MAYOR AND COUNCIL OF THE BOROUGH)
OF EAST NEWARK, and JAMES SCOTT)
and NICHOLAS COLTRE; WILLIAM)
JOHNSTON, and JOHN B. SPINELLI,)
Respondents)

ON APPEAL
O R D E R

Matthew Krafte, Esq., Attorney for Appellant.
Gerald A. Caruso, Esq., Attorney for Respondent Borough of East Newark.
Leo S. Carney, Esq., Attorney for Respondents Scott and Coltre.

BY THE COMMISSIONER:

On October 28, 1947, Conclusions and Order were entered in the above matter, wherein final disposition of the appeal, in so far as it related to the license granted James Scott and Nicholas Coltre, was reserved pending proof that a certain doorway opening into a "neighborhood" candy store had been permanently closed (Bulletin 781, Item 7), and

It appearing by proof satisfactory to me that said doorway has been permanently closed,

It is, on this 26th day of November, 1947,

ORDERED that the action of respondent Mayor and Council of the Borough of East Newark in issuing a plenary retail distribution license to James Scott and Nicholas Coltre, for premises 162 Central Avenue, East Newark, be and the same is hereby affirmed.

ERWIN B. HOCK
Commissioner.

9. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL SALE OF WINE IN PRIVATE RESIDENCE - PROCEEDINGS NOT ABATED BY DEATH OF OWNER OF WINE PENDING HEARING - ADMINISTRATOR'S CLAIM FOR RETURN ON SAME FOOTING AS DECEDENT'S - ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure) Case No. 7113
on March 24, 1947, of 136)
one-gallon jugs of wine, and)
16 one-gallon jugs of vermouth,) ON HEARING
at 119 Delancy Street, City of) CONCLUSIONS AND ORDER
Newark, County of Essex and)
State of New Jersey.)

W. Eugene San Fillipo, Esq., Attorney for Bernard Scarpa,
Administrator of the Estate of Baldasarro Scarpa.
Harry Castelbaum, Esq., appearing for the Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether 136 gallon jugs of wine and 16 gallon jugs of vermouth, seized on March 24, 1947 at 119 Delancy Street, Newark, New Jersey, constitute unlawful property and should be forfeited.

It appears that on March 23, 1947 police officers of the City of Newark apprehended Edward Jackson carrying a bottle of wine. Jackson told the officers that he had purchased the wine at the above address. The officers then brought Jackson back to the premises, where he identified Baldasarro Scarpa as the person who had sold him the wine.

Baldasarro Scarpa did not hold any license authorizing him to sell or serve alcoholic beverages and the premises were not licensed for the sale of alcoholic beverages. Accordingly, the officers arrested Baldasarro Scarpa on charges of selling alcoholic beverages without a license and possessing alcoholic beverages with intent to sell the same unlawfully.

On March 24, 1947 two ABC agents made an arrangement with Scarpa and his attorney, at a police court in Newark, whereby these agents and other officers, accompanied by Scarpa and his attorney, searched Scarpa's residence and found therein and seized the wine and vermouth in question. The agents were unable to ascertain from Scarpa whether he denied or affirmed the sale of wine to Jackson because of Scarpa's difficulty in understanding or replying to questions due to his poor command of the English language.

Notice of the instant seizure was mailed to Baldasarro Scarpa on June 9, 1947. Baldasarro Scarpa died on June 21, 1947 and his son, Bernard Scarpa, was appointed administrator of the estate on July 8, 1947.

When the matter came on for hearing pursuant to R. S. 33:1-66, Bernard Scarpa appeared with counsel and sought return of the wine and vermouth.

At such hearing Edward Jackson testified that he purchased a bottle of wine from Baldassarro Scarpa on March 23rd at the Delancy Street address; that Scarpa had poured this wine from a jug into a bottle; and that he had purchased wine there by the drink on previous occasions from Scarpa.

Jackson testified, on cross-examination, that he was employed by the City of Newark as a laborer on an ash and garbage collection truck; that Scarpa's residence was one of the stops and, on occasion, at Scarpa's request, Jackson carried cans of refuse from the premises to the street because of physical ailments suffered by Scarpa. Counsel sought to imply that Jackson was given wine for such services, but Jackson emphatically denied that such was the fact. On the contrary, Jackson says that he obtained wine from Scarpa for a number of years and paid for quite a few but not all of such drinks. So far as appears, Jackson has no reason to unjustly accuse Scarpa of having sold alcoholic beverages to him.

Counsel for Bernard Scarpa, the administrator of his father's estate, asked for dismissal of the proceedings, on the contention that the case could not be tried fairly because, by reason of his death prior to the hearing of the case, Baldassarro Scarpa could not defend himself.

Although not mentioned specifically, counsel probably intended to urge that the forfeiture proceeding abated upon the death of Baldassarro Scarpa, and that Edward Jackson's testimony as to his transactions with such decedent were not admissible.

Proceedings under the Alcoholic Beverage Law for the forfeiture or condemnation of liquor or other property are in rem. Seizure Case No. 5439, Bulletin 437, Item 4. Commonwealth v. One 1936 Ford Truck, Three Ton, 7 A. 2d 532, 136 Pa. Super. 473. The only issue is whether the seized property was used or intended for use in violation of the liquor law. The decision that such violation was committed is the basis for forfeiture. The determination in such decision that the owner of the property committed the offense is merely incidental and of no controlling effect as to his guilt or innocence in criminal or any other proceedings. Cf. Alcorn v. Alexandrovicz, 153 A. 786, 112 Conn. 618. The owner of the property appears in the proceedings as a claimant, as an actor in the proceeding -- in effect, a petitioner seeking return of his property. Cf. 2 C.J.S. 197, note 81.

Consequently, the death of a person interested in an action in rem does not abate such action. Cf. 2 C.J.S. 193, p. 97, Thomas v. Thomas, 79 N.J.E. 461.

Jackson's testimony as to his transactions with the decedent is competent evidence and is not to be rejected because of the provisions of R. S. 2:97-2. That statute provides that in a suit by an executor, administrator or guardian, no other party to such suit may testify as to any transaction with the decedent unless such executor, administrator or guardian offers himself as a witness in his own behalf and testifies to a transaction with, or statement by, the decedent or ward.

The instant forfeiture proceeding is not a suit by an executor, administrator or guardian nor is Edward Jackson a party to such proceeding. Moreover, the statute is not applicable to an action in rem. Thomas v. Thomas, supra.

The motion to dismiss the proceedings is therefore denied.

Jackson's testimony established that Baldassarro Scarpa sold wine to him from a jug in Scarpa's residence. It is therefore a reasonable inference that the large quantity of wine and vermouth found there was possessed by Scarpa for the purpose of unlawful sale and hence constitutes illicit alcoholic beverages. R. S. 33:1-1(i).

Bernard Scarpa, although without knowledge of the transactions between Jackson and his father, seeks to establish that it is improbable that his father sold wine; that the alcoholic beverages must have been intended only for his father's personal consumption.

Bernard Scarpa testified that he was on friendly terms with his father and visited him frequently; that his father conducted a grocery store for many years and also held a license to sell wine at the address in question prior to 1920; and that his father had been retired for about ten years. He says that his father had an income of about \$80.00 a month from rents of premises which he owned and a net income of about \$60.00 to \$70.00 a month after payment of taxes and other charges. From this income his father paid his food, clothing and doctor's bills. Bernard Scarpa further says that his father purchased wine for his own consumption from licensed dealers, drinking an average of a gallon a day, at the cost of \$2.00 per gallon. Bernard Scarpa produced bills for wine which his father bought totalling over \$300.00 for the period November 1946 to March 1947. The only assets which Bernard Scarpa discovered at his father's death aside from the real estate was \$250.00 in cash.

Even if I were to disregard Jackson's definite evidence and enter the realm of speculation, Bernard Scarpa's account of his father's resources and manner of life strongly indicate the improbability that his father expended so much of his meagre finances to purchase wine for his own use.

I am satisfied, from the evidence, that the wine and vermouth were intended for unlawful sale and I therefore find that such alcoholic beverages are illicit and subject to forfeiture. R.S. 33:1-1(y), R. S. 33:1-2, R. S. 33:1-66.

The remaining consideration is whether it is fair to enforce forfeiture against Baldasarro Scarpa's estate. The primary purpose of forfeiture is to impose a penalty upon the wrongdoer. With Baldasarro Scarpa's death, that objective, of course, is extinguished.

However, my authority to waive forfeiture is limited in scope. I am authorized to return property subject to seizure only in the event that the person seeking such return establish to my satisfaction that he had acted in good faith and had unknowingly violated the law. R.S. 33:1-66(e). Where, as here, a person has made a practice of selling alcoholic beverages without a license, he can scarcely claim, so many years after Repeal, that he was unaware that such sales are illegal. Cf. Seizure Case No. 7145, Bulletin 783, Item 6.

Accordingly, Baldasarro Scarpa could not have obtained return of the wine and vermouth. The administrator does not acquire any claim superior to that of his decedent; he takes only what his intestate rightfully held at his death. Flaks v. De Berry, 116 A.L.R. 1191.

Accordingly, it is DETERMINED AND ORDERED that the 136 gallon jugs of wine and 16 gallon jugs of vermouth constitute unlawful property, and that the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part at the direction of the State Commissioner of Alcoholic Beverage Control.

ERWIN B. HOCK
Commissioner.

Dated: December 2, 1947.

10.

ACTIVITY REPORT FOR NOVEMBER, 1947

ARRESTS:

Licensees and employees - - - - -	8	Bootleggers - - - - -	14	
Total number of persons arrested - - - - -				22

SEIZURES:

Brewed malt beverages - gallons - - - - -				150.49
Distilled alcoholic beverages - gallons - - - - -				25.59
Illicit alcohol - gallons - - - - -				162.00
Wine - gallons - - - - -				10.05
Motor vehicles - cars - - - - -				2

RETAIL LICENSEES:

Total number of premises inspected - - - - -				920
Total number of premises where alcoholic beverages were gauged - - - - -				590
Total number of bottles gauged - - - - -				9140
Total number of premises where violations were found - - - - -				46
Total number of violations found - - - - -				87
Type of violations found:				
Illicit liquor - bottles - - - - -	52	Disposal permit necessary - - - - -	3	
Unqualified employees - - - - -	10	Prohibited signs - - - - -	2	
Regulations 38 sign not posted - - - - -	8	Other mercantile business - - - - -	1	
Probable front - - - - -	5	Other violations - - - - -	3	
Improper beer taps - - - - -	3			

STATE LICENSEES:

License applications investigated - - - - -				9
Premises inspected - - - - -				6

COMPLAINTS:

Complaints assigned for investigation - - - - -				272
Complaints investigated, reviewed and closed - - - - -				263
Investigations completed - not closed administratively - - - - -				25
Investigations assigned, not yet completed - - - - -				223

LABORATORY:

Analyses made - - - - -				190
"Shake-up" cases (alcohol, water and artificial color) - bottles - - - - -				12
Liquor found to be not genuine as labeled - - - - -				35

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made - - - - -				30
Persons fingerprinted for non-criminal purposes - - - - -				159
Identification contacts made with other enforcement agencies - - - - -				179
Motor vehicle identifications via N.J.State Police Teletype - - - - -				6

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities - - - - -				12
Violations involved:				
Sale during prohibited hours - - - - -	5	Permitting lottery activity on premises (punch board) - - - - -	-1	
Mislabeled beer taps - - - - -	2	Sale to minors - - - - -	-1	
Permitting bookmaking on premises - - - - -	2	Sale to non-members by clubs - - - - -	-1	
Sale on Election Day - - - - -	1			
Cases instituted at Department - - - - -				19
Violations involved:				
Fraud and front - - - - -	9	Possessing illicit liquor - - - - -	1	
Sale to minors - - - - -	6	Sale to intoxicated persons - - - - -	1	
Sale during prohibited hours - - - - -	3	Sale under Fair Trade price - - - - -	1	
Cases brought by municipalities on own initiative and reported to Department - - - - -				8
Violations involved:				
Sale to minors - - - - -	4	Hindering investigation - - - - -	1	
Permitting brawls on premises - - - - -	3	Serving women at a bar - - - - -	1	
Sale to intoxicated persons - - - - -	2			

HEARINGS HELD AT DEPARTMENT:

Total number of hearings held - - - - -				40
Appeals - - - - -	9	Seizures - - - - -	5	
Disciplinary proceedings - - - - -	19	Tax revocation - - - - -	1	
Eligibility - - - - -	6			

PERMITS ISSUED:

Total number of permits issued - - - - -				1357
Employment - - - - -	90	Disposal of alcoholic beverages - - - - -	167	
Solicitors - - - - -	117	Special wine - - - - -	517	
Social affairs - - - - -	388	Miscellaneous - - - - -	78	

ERWIN B. HOCK,
Commissioner.

11. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT STILL PARTS AND ALCOHOLIC BEVERAGES AND OTHER ARTICLES FOUND THEREWITH ORDERED FORFEITED - PADLOCKING WAIVED.

In the Matter of the Seizure)
on July 25, 1947, of four still)
parts and a quantity of wine,)
beer, and other alcoholic bever-)
ages, a wine press, and some)
grape mash, at premises occupied)
by Guiseppe Raimondi, located on)
Morsetown Road, West Milford)
Township, in the County of Passaic)
and State of New Jersey.)
- - - - -)

Case No. 7153

ON HEARING
CONCLUSIONS AND ORDER

Anthony A. Calandra, Esq., Attorney for Guiseppe (Joe) Raimondi.
Harry Castelbaum, Esq., appearing for the State Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 2 of the Revised Statutes, to determine whether certain still parts, alcoholic beverages, and other articles, described in a schedule attached hereto, seized on July 25, 1947, on premises occupied by Guiseppe Raimondi located on Morsetown Road, West Milford Township, Passaic, New Jersey, constitute unlawful property and should be forfeited, and further, to determine whether the premises should be padlocked.

It appears that on July 22, 1947, an ABC agent came to the premises to check a complaint that Raimondi was engaging in illegal alcoholic beverage activities. According to the agent, he purchased a bottle of wine from Raimondi on that day. Raimondi did not hold any license authorizing him to sell or serve alcoholic beverages and the premises were not licensed for the sale of alcoholic beverages.

On July 25, 1947 the ABC agent returned to the premises, accompanied by another ABC agent and two local police officers. The first agent again requested Raimondi to sell him wine, but Raimondi told him that he did not have any more wine. Thereafter, the ABC agents executed a search warrant for the premises. They found and seized 57 half-gallon bottles of wine, 24 gallon bottles of wine, a wine press, 27 empty wine cartons, and a 50-gallon barrel containing grape mash residue, which were in the cellar; 26 bottles of beer, two half-gallon bottles of wine and four bottles of other alcoholic beverages, which were in the kitchen; and four copper plates, (still parts), which were in the attic. The still parts were not registered with the State Commissioner of Alcoholic Beverage Control as required by R. S. 33:2-1.

Raimondi told the officers that the still parts were stored by him as an accommodation for a man who resided in Paterson but whose name was unknown to him. Raimondi was arrested on the charges of selling alcoholic beverages without a license, possessing alcoholic beverages with intent to sell the same unlawfully, and possessing unregistered still parts. Raimondi has since pleaded non vult in criminal court to the charges of unlawful sale and possession of alcoholic beverages, and the charge of possessing still parts was dismissed.

When the matter came on for hearing pursuant to R. S. 33:2-4, Guiseppe Raimondi appeared with counsel, who contended that the seized property did not in fact constitute unlawful property, and hence sought its return. He also sought to avoid padlocking.

The unregistered still parts are contraband and subject to forfeiture, irrespective of the outcome of any criminal proceedings in the case. Circumstances may prevent the conviction in criminal proceedings of the person in whose residence such parts are found, but no one is entitled to retain contraband property. The wine and other articles on the premises where the illicit still parts were seized are likewise subject to forfeiture. R. S. 33:2-5. It is therefore immaterial whether the sale of the bottle of wine by Raimondi to the ABC agent was an isolated incident or whether, on the other hand, Raimondi made a practice of selling alcoholic beverages. His plea in the criminal proceedings apparently eliminates his pretense that he gave the bottle of wine to the ABC agent as a gift.

All of the seized property is therefore legally subject to forfeiture. Raimondi's unlawful sale of the wine precludes him from obtaining waiver of such forfeiture. See R. S. 33:2-7.

However, padlocking does not thereby follow as a matter of course. The imposition of that penalty is entrusted to my absolute discretion. R. S. 33:2-5. There are no qualifying conditions that good faith and unknowing violation of the law must be established, such as are set forth in R. S. 33:2-7.

According to the evidence presented, Raimondi is 60 years of age, and has owned and occupied the premises, with his wife and child, for over 20 years. He was employed by the WPA, then at a defense plant, and for the past few years at odd jobs. A considerable portion of his income appears to be derived from rental of rooms to summer boarders. He occasionally sold produce grown on the premises. He has no financial resources other than the premises in question.

Raimondi has no previous criminal record, except for an arrest in September 1934 on charge of possessing implements and paraphernalia for the manufacture of alcoholic beverages. He was acquitted of this charge in December 1935. That case involved the seizure of parts of what appeared to be a still in process of being dismantled. The seizure was made by local police, and the case did not come to the attention of the State Department of Alcoholic Beverage Control until after the expiration of the statutory 15-day period within which padlock proceedings may be brought. R. S. 33:2-4.

Although I do not accept at face value Raimondi's claim that he stored the still parts in his attic for a "friend", it is to be noted that the only still parts seized were the four copper plates, relatively minor parts of a complete still.

It has been the consistent policy of the State Department of Alcoholic Beverage Control to waive padlocking where it is not a large commercial still, and the owner of the premises has no previous criminal record for illicit still operations, occupies the premises with his family, and his financial circumstances are such as to lead to undue hardship if the premises are padlocked. The stress of the current housing shortage is another factor which has influenced waiver of padlocking. Re Bakalian, Bulletin 328, Item 2, Seizure Case No. 6972, Bulletin 711, Item 11, Seizure Case No. 7096, Bulletin 761, Item 6.

I am not inclined to deny Raimondi relief merely because of the 1934 seizure at the premises in view of the long lapse of time, and since this actually is the first time that it has been brought to Raimondi's attention, in formal proceedings, that possession of illicit still parts may lead to padlocking of the premises. Hence, I shall waive the padlocking penalty.

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

ERWIN B. HOCK
Commissioner.

Dated: December 8, 1947.

SCHEDULE "A"

- 4 - copper plates of mushroom type column
- 57 - 1/2-gallon bottles of Muscatel wine
- 24 - 1-gallon bottles of Zinfandel wine
- 26 - bottles of beer
- 4 - bottles of other alcoholic beverages
- 1 - wine press
- 27 - empty wine cases
- 50 - gallon barrel of grape mash

12. STATE LICENSES - NEW APPLICATIONS FILED.

Arthur J. Marzulli
T/a Summonte Wines
120 - 8th Ave.
Newark, N. J.

Application filed November 25, 1947 for transfer of Plenary Winery License V-32 (with retail privileges) from Olindo Marzulli, Executor of the Estate of Frank R. Marzulli, t/a Summonte Wines.

Lawrence Warehouse Company
1313 Baltic Avenue
Atlantic City, N. J.

Application filed December 1, 1947 for Public Warehouse License.

ERWIN B. HOCK
Commissioner.

13. FAIR TRADE - IMPORTANT NOTICE OF PUBLICATION OF SUPPLEMENT FOR LISTING NEW PRICES ON IMPORTS AFFECTED BY TARIFF REDUCTIONS.

December 3, 1947.

In order that consumers in New Jersey may benefit from the reduction in tariffs on imported alcoholic beverages, which is effective on January 1, 1948, it is my decision that a supplemental minimum resale price pamphlet shall become effective on January 2, 1948.

Accordingly, manufacturers and wholesalers of imports covered by trade agreements providing for such tariff reductions, may submit new Fair Trade listings on or before December 10, 1947 reflecting price reductions to be passed on to the consumer public.

It is emphasized that the forthcoming supplemental Fair Trade publication to be effective on January 2, 1948 will be issued solely for the listing of imported brands of alcoholic beverages whose prices are affected by tariff reductions effective January 1, 1948. Changes in minimum consumer price listings for brands of alcoholic beverages other than imports must await the publication of the next complete minimum resale price pamphlet to be effective March 2, 1948.

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

Erwin B. Hoek

Commissioner.