

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

BULLETIN 526

SEPTEMBER 10, 1942.

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO CONSUMER BY HOLDER OF LIMITED WHOLESALE LICENSE - DELIVERY OF ALCOHOLIC BEVERAGES IN VEHICLE NOT BEARING TRANSPORTATION INSIGNIA - LIMITED WHOLESALE LICENSE SUSPENDED FOR 5 DAYS, LESS 2 FOR GUILTY PLEA.

DISCIPLINARY PROCEEDINGS - HOLDER OF SOLICITOR'S PERMIT - AIDING AND ABETTING HOLDER OF LIMITED WHOLESALE LICENSE IN SALE TO CONSUMER - DELIVERY OF ALCOHOLIC BEVERAGES IN VEHICLE NOT BEARING TRANSPORTATION INSIGNIA - SOLICITOR'S PERMIT SUSPENDED FOR 15 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against  
MILLER BREWING CO.,  
1901 RKO Building,  
1270 - 6th Avenue,  
New York, N. Y.,

Holder of Limited Wholesale License WL-63 issued by the State Commissioner of Alcoholic Beverage Control.

In the Matter of Disciplinary Proceedings against  
LEWIS DAVIDSON CASSELL,  
428 Winthrop Road,  
Union, N. J.,

Holder of Solicitor's Permit No. 1886 issued by the State Commissioner of Alcoholic Beverage Control.

CONCLUSIONS AND ORDER

Leo J. Berg, Esq., Attorney for Defendant-Licensee and Defendant-Permittee.  
William F. Wood, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

These two cases, since interrelated, will be decided together.

The licensee has pleaded guilty to charges alleging that it (1) sold alcoholic beverages in a manner not pursuant to and within the terms of its limited wholesale license in that it sold twelve cases of beer to a consumer; and (2) delivered said alcoholic beverages in a vehicle not bearing any transportation insignia.

The solicitor pleaded guilty to charges alleging that he aided and abetted the licensee to commit the aforesaid violations.

It appears that, on November 7, 1941, the licensee instructed its employee, Lewis Davidson Cassell, holder of a solicitor's

permit, to deliver twelve cases of beer to a consumer. The solicitor delivered the beer to the consumer in his own automobile, which did not bear any transportation insignia.

The licensee's limited wholesale license permits it to sell brewed malt alcoholic beverages and naturally fermented wines only to New Jersey retailers and wholesalers. It does not permit sales to consumers. In attempted extenuation, the licensee explains that the sale in question was an isolated one and was made only as a personal favor to the consumer. Conceding this to be so, it does not excuse the violation. Licensees must learn to confine their business within the strict limitations of the privileges conferred by their licenses, and that to exceed these limitations will result in suspension or revocation of the privileges.

I shall suspend the license of the Miller Brewing Co. for five days, less two days for the guilty plea. The permit of Lewis Davidson Cassell will be suspended for fifteen days, less five days for the guilty plea. If experience indicates that these penalties do not act as a sufficient deterrent to similar violations in the future, they will be substantially increased to a point which will insure the desired result.

Accordingly, it is, on this 31st day of August, 1942,

ORDERED, that Limited Wholesale License WL-63, heretofore issued to Miller Brewing Co. by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for a period of three (3) days, effective September 8, 1942, at 12:01 A.M. and concluding September 11, 1942, at 12:01 A.M.; and it is further

ORDERED, that Solicitor's Permit No. 1886, heretofore issued to Lewis Davidson Cassell by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for a period of ten (10) days, effective September 8, 1942, at 12:01 A.M. and concluding September 18, 1942, at 12:01 A. M.

ALFRED E. DRISCOLL,  
Commissioner.

2. MORAL TURPITUDE - CRIMES OF EMBEZZLEMENT, LARCENY AND RECEIVING INVOLVED MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

In the Matter of an Application )  
to Remove Disqualification be- )  
cause of a Conviction, pursuant )  
to R. S. 33:1-31.2. )

CONCLUSIONS  
AND ORDER

Case No. 230 - - - - - )

BY THE COMMISSIONER:

In his petition filed herein, petitioner sets forth that, in August 1921, he pleaded non vult in a Court of Special Sessions to the crime of adultery, at which time he was fined \$50.00 and placed on probation for one year. He also sets forth that, in February 1922, he pleaded non vult in a Court of Quarter Sessions to the crime of embezzlement, larceny and receiving; was sentenced to serve nine months in a penitentiary; released after serving three months and re-sentenced to probation for one year. He also sets forth that he has

not been convicted of any crime since June 1922. His fingerprint records do not disclose that he has been convicted of any other crime.

At the hearing herein, petitioner testified that in February 1922 he and another man were charged with having committed the crime of embezzlement, larceny and receiving after they had obtained money from a third person by representing that they operated a so-called "money-making" machine. It is clear that his conviction upon this charge involved moral turpitude, aside from any question as to whether the crime of adultery involved that element. Pursuant to R. S. 33:1-31.2, petitioner now seeks removal of his disqualification to hold a license or to be employed by a liquor licensee in this State.

Two insurance agents, and the proprietor of a luncheonette, who have known petitioner intimately for fifteen, ten and seven years respectively, testified at the hearing that during the period they have known him he has been a decent and law-abiding citizen. For the past fifteen years, petitioner has been employed as a waiter on premises which have been licensed since Repeal. He testified herein that he did not know he was disqualified from working on licensed premises; that no one ever questioned his right to be so employed and that he voluntarily filed his petition upon the advice of his attorney.

I am satisfied that petitioner, whose record is clear for more than twenty years last past, has fully rehabilitated himself and that his continued association with the alcoholic beverage industry will not be detrimental to the public interest.

Accordingly, it is, on this 31st day of August, 1942,

ORDERED, that petitioner's statutory disqualification because of conviction of crime be and the same is hereby lifted, in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL,  
Commissioner.

3. MORAL TURPITUDE - CRIME OF ROBBERY INVOLVED MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - FALSE ANSWERS IN LICENSE APPLICATIONS FOR THE YEARS 1938-41 INCLUSIVE - APPLICATION DENIED.

In the Matter of an Application )  
to Remove Disqualification be- )  
cause of a Conviction, pursuant )  
to R. S. 33:1-31.2. )  
Case No. 231. )  
----- )

CONCLUSIONS  
AND ORDER

BY THE COMMISSIONER:

In 1931 petitioner was convicted of the crime of assault and battery and fined \$3.00; in January 1934 he was convicted of the crime of robbery, sentenced to serve one year, and actually served ten months in State's Prison; in February 1935 he was convicted of the crime of larceny and placed on probation for two years. Considering only his second conviction, the crime of robbery necessarily involved moral turpitude. Re Kennedy, Bulletin 118, Item 10. Hence, since January 1934 petitioner has been and now is disqualified from holding a liquor license or being employed by or connected in any business capacity with a liquor licensee in this State. R. S. 33:1-25, 26. Petitioner seeks herein to have me exercise my discretionary power to lift his disqualification in accordance with the provisions of R. S. 33:1-31.2.

At the hearing petitioner admitted that he had held a retail liquor license in this State from April 1938 to December 1941, at which time he transferred the license to his wife, who now operates the licensed business. He admits further that, in the application filed in April 1938, upon which the license was transferred to him, and in the applications filed in 1938, 1939, 1940 and 1941 for renewals of his license, he denied that he had ever been convicted of any crime. His only attempted explanation was that he thought the question in the application referred only to liquor violations. Frankly, I do not believe his attempted explanation because the question is unambiguous and reads:

"Have you or has any person mentioned in this application ever been convicted of any crime?"

I conclude that petitioner herein perpetrated a fraud on the local issuing authorities when he obtained and renewed his license.

I shall not consider the testimony given by the witnesses who appeared on petitioner's behalf because, on the facts stated above, I conclude that I should not exercise my discretionary power to grant him the relief prayed for in his petition.

Accordingly, the petition is denied.

ALFRED E. DRISCOLL,  
Commissioner.

Dated: August 31, 1942.

4. ACTIVITY REPORT FOR AUGUST, 1942

To: Alfred E. Driscoll, Commissioner

ARRESTS: Licensees and employees - - - - 14 Bootleggers - - - - - 6
Total number of persons arrested - - - - - 20

SEIZURES: Stills - 1 to 50 gallons daily capacity - - - - - 1
50 gallons and more daily capacity- - - - - 0
Total number of stills seized - - - - - 1
Mash - gallons- - - - - 0
Motor vehicles - Trucks - - - - - 2
Passenger cars - - - - - 0
Total number of motor vehicles seized - - - - - 2
Beverage alcohol - gallons- - - - - 0
Brewed malt alcoholic beverages (beer, ale, etc.) - gallons - - - - 20.26
Wine - gallons- - - - - 8.89
Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons - - 21.25

RETAIL LICENSEES:
Number of premises in which were found:
Illicit (bootleg) liquor - 0 "Fronts" (concealed ownership) - - 6
Gambling devices - - - - - 0 Improper beer tap markers- - - - - 2
Prohibited signs - - - - - 0 Stock disposal permits necessary -17
Unqualified employees- - 118 Other types of violations- - - - -31
Total number of premises where violations were found - - - - - 165
Total number of premises inspected - - - - - 1,793
Total number of unqualified employees found- - - - - 173
Total number of bottles gauged - - - - - 11,782

STATE LICENSEES:
Premises inspected - - - - - 8
License applications investigated- - - - - 12

COMPLAINTS:
Investigated, reviewed and closed- - - - - 249
Investigation assigned, not yet completed- - - - - 557

LABORATORY:
Analyses made- - - - - 126
"Shake-up" cases (alcohol, water and artificial coloring)- - - - - 15
Liquor found to be not genuine as labeled- - - - - 0

IDENTIFICATION BUREAU:
Criminal fingerprint identifications made- - - - - 18
Persons fingerprinted for non-criminal purposes- - - - - 170
Identification contacts with other enforcement agencies- - - - - 112
Motor vehicle identifications via N. J. State Police Teletype- - - - 3

DISCIPLINARY PROCEEDINGS:
Cases transmitted to municipalities- - - - - 6
Cases instituted at Department - - - - - 11

HEARINGS HELD AT DEPARTMENT:
Appeals - - - - - 13 Eligibility - - - - - 12
Application for club license- 1 Investigatory hearing - - 1
Disciplinary proceedings- - - 19 Seizures- - - - - 16
Total number of hearings held - - - - - 62

PERMITS ISSUED:
Unqualified employees - - - - - 801
Solicitors- - - - - 63
Social affairs- - - - - 235
Home manufacture of wine- - - - - 30
Disposal of alcoholic beverages - - - - - 96
Miscellaneous permits - - - - - 110
Total number of permits issued- - - - - 1,335

Respectfully submitted,
S. B. White,
Chief Inspector.

5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - NO EVIDENCE OF INTENTIONAL CHISELING - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary )  
Proceedings against )

ISADORE MILLER & SAMUEL M. NAGLE, )  
571 Grand Street, )  
Jersey City, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-17, issued by the )  
Board of Commissioners of the City )  
of Jersey City. )  
-----)

Solomon & Miller, Esqs., by Abraham Miller, Esq., Attorney for  
Isadore Miller & Samuel M. Nagle.  
Abraham Merin, Esq., Attorney for the State Department of  
Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendants plead guilty to the charge of having sold liquor below the established Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

The Department's file discloses that on November 27, 1941 an investigator of this Department visited the defendants' licensed premises and there purchased from Isadore Miller (one of the licensees) a one gallon jug of Roma La Boheme Barbera Wine for \$1.25, although the Fair Trade price for such item was then \$1.35. See Bulletin 480.

I am satisfied, as the licensee contends, that the violation was unwitting, and was not made from any deliberate desire to "chisel."

Normally, since there is no intent to "chisel" in this case, I would, as a penalty for the violation, suspend the defendants' license for ten days, less five for the guilty plea, or a net of five days. See Re City Wine and Liquor Stores, Bulletin 490, Item 2; Re Park Liquors Corp., Bulletin 492, Item 5. Cf. Re Samuel Vogel, Inc., Bulletin 493, Item 10.

However, I note that the defendants have a past record. In 1940 the licensees pleaded guilty before the Jersey City Board of Commissioners to charges of conducting the business after 2:00 A.M. on Sunday and permitting persons on the premises, other than employees, during prohibited hours, and the license then held was suspended for two days.

Because of this past record, and all facts being considered, the penalty for the present violation will be increased to thirteen days, less five for the guilty plea, or a net of eight days.

Accordingly, it is, on this 4th day of September, 1942,

ORDERED, that Plenary Retail Consumption License C-17, heretofore issued to Isadore Miller & Samuel M. Nagle by the Board of Commissioners of the City of Jersey City, for premises located at 571 Grand Street, Jersey City, N. J., be and the same is hereby suspended for a period of eight (8) days, commencing September 8, 1942, at 2:00 A.M. and concluding September 16, 1942, at 2:00 A. M.

ALFRED E. DRISCOLL,  
Commissioner.

6. MORAL TURPITUDE - CRIME OF ASSAULT WITH INTENT TO KILL INVOLVED MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

In the Matter of an Application )  
to Remove Disqualification be- )  
cause of a Conviction, pursuant )  
to R. S. 33:1-31.2. )  
Case No. 234 )  
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CONCLUSIONS  
AND ORDER

BY THE COMMISSIONER:

Petitioner, in this proceeding, prays that his disqualification resulting from the conviction of crime be lifted pursuant to R. S. 33:1-31.2.

In 1932 petitioner pleaded guilty to the charge of assault with intent to kill and was thereupon sentenced to an indeterminate term in the Rahway Reformatory. He served thirteen months and was paroled. In 1936 he was found guilty of assault and battery and was fined \$15.00. Petitioner's first conviction was the outgrowth of an attempt on the part of a group of men to extort money from a person possessing a still. Petitioner drove the car involved in this act but testified that he did not have any knowledge of the group's mission. After having considered all the facts, I find that his crime nevertheless involved moral turpitude. The second conviction was the outgrowth of a street fight.

Petitioner testified that he has been steadily employed by a porcelain company for the past eight years (except for the last few months), and now wishes to work at his father's tavern.

At the hearing petitioner produced three character witnesses who have known him for at least seven years. Two of the witnesses are business men who live in the immediate neighborhood of the petitioner. They testified that petitioner bears a fine reputation in the neighborhood as an honest, hard-working person. The other witness has known the petitioner for at least ten years and has been in constant association with him. He states that petitioner is regarded as a law-abiding, well-behaved citizen of good character.

Petitioner's fingerprint returns show a clear record since his assault and battery case in 1936. The Chief of Police of the municipality where petitioner lives advises that there are no pending complaints or investigations against petitioner.

From all of the foregoing, I am satisfied that petitioner has been leading an honest and law-abiding life for at least five years last past, and that his association with the alcoholic beverage industry will not be contrary to the public interest. Hence, petitioner's disqualification will be removed.

Accordingly, it is, on this 3rd day of September, 1942,

ORDERED, that petitioner's statutory disqualification because of the convictions described herein be and the same is hereby lifted, in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL,  
Commissioner.

7. MORAL TURPITUDE - CRIME OF RECEIVING STOLEN GOODS INVOLVED MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

In the Matter of an Application )  
to Remove Disqualification be- )  
cause of a Conviction, pursuant )  
to R. S. 33:1-31.2. )

CONCLUSIONS  
AND ORDER

Case No. 238.  
-----)

BY THE COMMISSIONER:

In June 1929 petitioner pleaded non vult in a Court of Special Sessions to the crime of receiving stolen goods. He was sentenced to serve six months in a County Penitentiary and actually served about five months of his sentence. Fingerprint records confirm his testimony that he was never arrested or convicted at any other time.

At the hearing petitioner testified that, for the past thirteen years, he and his wife have conducted a restaurant which has never been licensed for the sale of alcoholic beverages. He further testified that shortly after the restaurant business was established, he purchased a quantity of cigarettes which had been stolen by another individual, and that his arrest and conviction on the charge of receiving stolen goods resulted from that transaction. In my opinion, the crime involved moral turpitude. Petitioner now seeks removal of his disqualification to hold a liquor license or to be employed by a liquor licensee in this State.

Two bakers who have transacted business with petitioner almost daily for more than nine years testified that during that time he has been a law-abiding citizen. A barber who conducts his business a few doors away from petitioner's restaurant testified that petitioner has "not been in any trouble" during the past twelve years.

I am satisfied that petitioner, whose record has been clear for more than twelve years, has fully rehabilitated himself and that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 3rd day of September, 1942,

ORDERED, that petitioner's statutory disqualification because of his conviction of a crime be and the same is hereby lifted in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL,  
Commissioner.

8. MORAL TURPITUDE - CRIME OF BREAKING, ENTERING AND LARCENY INVOLVED MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

In the Matter of an Application )  
to remove Disqualification be- )  
cause of a Conviction, pursuant )  
to R. S. 33:1-31.2. )

CONCLUSIONS  
AND ORDER

Case No. 235  
- - - - - )

BY THE COMMISSIONER:

In 1926 petitioner, then eighteen years of age, was convicted of breaking, entering and larceny and placed on probation for three years. This case involved entry into a dwelling by petitioner and two companions and the theft of property valued at \$140.00.

In 1929 applicant was convicted of conspiracy and sentenced to serve three years in State Prison and pay a fine of \$1,000.00. Petitioner conspired with two other persons to rob a woman of jewelry and other property.

In 1932 petitioner was arrested on charge of operating a baseball pool, but this charge was dismissed by the Grand Jury. Since 1932, according to the police records of the municipality where he resides, he has had a clear record.

Breaking, entering and larceny is a crime which ordinarily involves the element of moral turpitude. Re Case No. 175, Bulletin 492, Item 7. There are no facts here presented which free petitioner's conviction from that element. Similarly, the element of moral turpitude is present in a conviction of conspiracy of the character here involved. Cf. Case No. 236, Bulletin 279, Item 2.

Petitioner is, therefore, automatically disqualified from holding a liquor license or working for a liquor licensee in this State. R. S. 33:1-25, 26. He now seeks removal of such disqualification pursuant to R. S. 33:1-31.2.

It appears that petitioner, from his early youth, helped out in his father's retail dry goods store and is presently so employed, receiving in return no fixed allowance, but whatever his needs require. His parents are now elderly and the business in the store diminishing and petitioner now has an opportunity to go into the liquor business on his own. He has also been offered employment by a brewery. However, he cannot take advantage of either opportunity unless his petition is granted.

Petitioner's good conduct since his last conviction is vouched for by three character witnesses. One, a lawyer, admitted to practice in this state for fourteen years, testified that he has known petitioner for ten years; that he met him in a business capacity and later developed a social friendship with the entire family; that he knows that petitioner as a boy kept bad company and thus became involved in crime. Petitioner, according to this witness, is very much devoted to his family and is regarded in the community as a law-abiding citizen. This witness testifies further that in his opinion petitioner has seen the error of his ways and is now, and has been for many years, of good character. In the words of this witness,

"He (petitioner) wants to make a change in life and go out on his own two feet and make a place in the world for himself." Two persons doing business in the neighborhood who have known petitioner for about twenty years testified to like effect.

It thus appears that petitioner's criminal offenses were committed in his youth and apparently while he was under the influence of evil companions. His character witnesses speak highly of his conduct during the past ten years. Indeed, in 1934, the Court of Pardons of this state restored to him his rights as a citizen. He appears to have completely regenerated himself.

I therefore conclude that petitioner has led a law-abiding life for at least the last past five years, and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 31st day of August, 1942,

ORDERED, that petitioner's statutory disqualification because of the convictions described herein, be and the same is hereby lifted in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL,  
Commissioner.

9. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN LICENSE APPLICATION - FAILURE TO DISCLOSE CRIMINAL RECORD OF HOLDER OF ONE SHARE OF CORPORATE STOCK - ILLEGAL SITUATION CORRECTED BY WITHDRAWAL OF DISQUALIFIED STOCKHOLDER - 5 DAYS' SUSPENSION, LESS 2 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

ELITE, INC., )  
1211 Baltic Avenue, )  
Atlantic City, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Con- )  
sumption License C-167, issued )  
by the Board of Commissioners )  
of the City of Atlantic City. )  
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Altman & Backer, Esqs., by Chaim H. Sandler, Esq., Attorneys  
for Defendant-Licensee.  
Emerson A. Tschupp, Esq., Attorney for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

The licensee pleads non vult to the charge that in its li-  
cense application it concealed the fact that one of its stockholders  
had a criminal record, in violation of R. S. 33:1-25.

The licensee is a corporation in which, when obtaining its  
license, John Brennan held 98 of its 100 shares of stock, his wife  
Katherine 1 share and Frank Washington the remaining share. Brennan,  
in executing the defendant's application as President, represented  
therein that none of the stockholders had ever been convicted of a  
crime, when actually the said Frank Washington had been convicted of  
the crime of felonious entry and larceny and receiving stolen goods  
in Bucks County Court, Bristol, Pa. on February 16, 1937.

In explanation, the defendant's attorney, who actually filled out the application, testified that when so doing he asked all three stockholders (who were all present at the same time) whether they had been convicted of a crime, and all answered in the negative. It further appears that Brennan, who gave Washington a share of stock in order that there might be three stockholders for the purpose of forming the corporation, was unaware that Washington had been convicted of a crime. Brennan testified that he had known Washington and his family for over twenty-five years and "knew them to be a fine family and never knew them to be in any trouble." I am satisfied that Brennan, who is virtually the holder of all the corporate stock, had no knowledge of the existing criminal record against Washington. Moreover, it appears that Washington is no longer a stockholder in the corporation nor is he any longer employed on the licensed premises. However, the fact remains that a false statement was made in the applications. To allow any such violation to go unpunished would obviously leave the door open for abuse. Applicants must learn that they will be held to strict accountability for the sworn statements which they make in their applications. In the present case, since I believe there was no actual intent on Brennan's part to deceive, the licensee's penalty for the false answer will be suspension of the license for five days. See Re Carabelli, Bulletin 174, Item 15. Two days will be remitted in view of his plea of non vult.

Accordingly, it is, on this 10th day of June, 1942,

ORDERED, that Plenary Retail Consumption License C-167, heretofore issued to Elite, Inc. by the Board of Commissioners of the City of Atlantic City for premises located at 1211 Baltic Avenue, Atlantic City, be and the same is hereby suspended for a period of three (3) days, commencing at 12:01 A.M., Monday, June 15, 1942, and concluding at 12:01 A.M., Thursday, June 18, 1942.

ALFRED E. DRISCOLL,  
Commissioner.

10. CANCELLATION PROCEEDINGS - FACTS FOUND NOT TO WARRANT CANCELLATION - PROCEEDINGS DISMISSED.

In the Matter of Cancellation Proceedings against )  
 )  
 ELITE, INC., )  
 1211 Baltic Avenue, )  
 Atlantic City, N. J., )  
 Holder of Plenary Retail Consumption License C-167, issued by the )  
 Board of Commissioners of the )  
 City of Atlantic City. )  
 ----- )

O R D E R

Altman & Backer, Esqs., by Chaim H. Sandler, Esq., Attorneys for Defendant-Licensee.  
 Emerson A. Tschupp, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Contemporaneously with the institution of these proceedings to cancel defendant's retail consumption license as having been issued in violation of R. S. 33:1-25, the Department instituted disciplinary proceedings charging the licensee with having concealed in

its license application the fact that Frank Washington, a stockholder, officer and director in the corporation holding one share of stock, had a criminal record.

At the conclusion of the disciplinary proceedings and in view of the full facts developed at the hearing and the withdrawal of the disqualified stockholder from the corporation, defendant's license was suspended for a period of three days. See Re Elite, Inc., Bulletin 526, Item 9.

The evidence offered by the defendant, being the same in both proceedings, does not warrant cancellation of the license.

Accordingly, it is, on this 8th day of September, 1942,

ORDERED, that said cancellation proceedings be and the same are hereby dismissed.

ALFRED E. DRISCOLL,  
Commissioner.

11. SEIZURES - FORFEITURE PROCEEDINGS - ALLEGED GOOD FAITH NOT A DEFENSE IN ABSENCE OF PERMIT AND/OR LICENSE - HOME-MADE WINE MAY NOT BE SOLD OR USED FOR COMMERCIAL PURPOSES IN RESTAURANTS.

In the Matter of the Seizure on )  
April 25th and 26th, 1942 of )  
about 650 gallons of home-made )  
wine and some other alcoholic )  
beverages, at 97 Ferry Street, )  
in the City of Newark, County of )  
Essex and State of New Jersey. )

ON HEARING  
CONCLUSIONS AND ORDER

Elias G. Willman, Esq., Attorney for Julio Gonsalves.  
Harry Castelbaum, Esq., Attorney 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 a quantity of home-made wine and other alcoholic beverages, itemized in a schedule hereinafter referred to, constitute unlawful property and should be forfeited.

Julio Gonsalves conducts a restaurant at the above address, patronized mainly by Brazilians or others of South American ancestry; to these persons Gonsalves customarily served wine with their meals, for which he made an extra charge; all this sans liquor license.

ABC agents, after having sampled the food, tasted the wine and purchased whiskey and wine for off-premises consumption, thereafter searched the premises and discovered thereon a quantity of beer and brandy and eleven full and two partly full barrels of home-made wine. Gonsalves, having admitted that he had manufactured the wine without obtaining a permit or license from this Department, was arrested on charges of possession and sale of illicit liquor; pleaded guilty, and paid a fine of \$200.00.

At the statutory hearing, Gonsalves sought the return of the wine upon the ground that he had acted in good faith. His claim that his primary purpose in making the wine was to use the same in enriching and flavoring the foods prepared in his restaurant, following

Brazilian custom, finds little support in the evidence. His statement is hardly consistent with the presence of thirteen barrels of wine in the cellar. Likewise, Gonsalves' plea that, in serving wine to his patrons with their meals, he was merely following a Brazilian custom and did not realize he was violating the New Jersey law, while interesting, is entirely beside the point.

The delightful customs that prevail down South America way may be followed here provided there is no violation of our North American law. The good neighbor policy may not be applied in lieu of a permit or license, as required by the New Jersey law.

The wine in question was illegally manufactured by Gonsalves because he had not obtained a permit from this Department, as provided for by R. S. 33:1-75, and hence, is an illicit beverage subject to forfeiture, under R. S. 33:1-2. It is likewise illicit and subject to forfeiture because it was possessed for the purpose of illegal sale. The beer and other alcoholic beverages found on the premises are likewise subject to forfeiture under R. S. 33:1-66(b).

Home-made wine cannot be sold under any circumstances, whether it be with or without a meal, either at home or in a restaurant. Similarly, it cannot be used in a restaurant kitchen to flavor or enrich the food. Commercially manufactured wine is available for that purpose. In short, home-made wine can only be used for the enjoyment of the head of the house, his family and his bona fide guests.

Hence, whether Gonsalves is sincere or is merely offering an artful explanation as to his reason for making the wine and as to his ignorance of the law is of no consequence, because the wine cannot be legally used for the purpose for which it was made. Therefore, it must be confiscated.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" annexed hereto, constitutes 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 Commissioner.

ALFRED E. DRISCOLL,  
Commissioner.

Dated: September 8, 1942.

SCHEDULE "A"

- 1 - 1 gallon jug of wine
- 35 - bottles of beer
- 1 - bottle of brandy
- 13 - 50 gallon barrels of wine

12. REGULATIONS NO. 35 - APPLICATION FOR APPROVAL OF SALES CONTEST DENIED - HEREIN OF CHANGE IN POLICY RE SALES CONTESTS AND THE AWARDING OF PRIZES THEREFOR.

Department of Alcoholic Beverage Control,  
Newark, N. J.

Gentlemen:

We would like your approval on a sales contest on one of our private label items known as \_\_\_\_\_ Blend, to run as of the date the approval is given to October 15, 1942.

It is our desire to give each salesman a quota. For each case sold up to the quota, he is to receive 40 points per case. He received an additional 10 points per case for a certain percentage of the cases sold over the quota, and another 10 points per case for the amount sold over the second figure. Inasmuch as each salesman will receive a different quota, we cannot give you herewith the exact figure for each salesman unless we go into the exact detail on the number of cases on which the quotas are based.

Each point is to be equivalent to one cent and will be in the form of gift certificates purchased from L. Bamberger & Company, which will not be redeemable for cash. These certificates are purchased by us from L. Bamberger & Company and will be personally handed to each salesman at the expiration of the contest period.

Your immediate consideration of this contest is requested so that if approved, we can start on it as soon as possible.

Very truly yours,

August 25, 1942

Gentlemen:

Re: Request for Contest

We have your letter of August 17th, wherein you ask permission to conduct a contest among your salesmen for the promotion of \_\_\_\_\_ Blend during the current period, ending October 15, 1942. It is noted that you propose to award prizes to the winners in the form of certificates of credit to be converted into merchandise. While this follows the usual formulæ of similar contests previously permitted, it now provides the ground for the Commissioner's objections to the conduct of any further sales contests among the salesmen of New Jersey wholesalers.

Viewed in any light, an award of merchandise or of a certificate of credit to a winning salesman in a sales contest is a bonus or added inducement and in direct conflict with the spirit of Rule 1 of Regulations No. 35. But that is not all. Even though the prizes in a contest are awarded with the specific stipulation that they are for the sole and exclusive use of the salesmen, neither a well-meaning wholesaler nor this Department is in a position to bar the conversion of those prizes into cash, or to check their ultimate direction into improper channels as inducements to favored retail licensees. What absolute guarantee is there that prizes are non-transferable?

Further, there have been presented examples of abuses in sales contests emanating from gratuitous interpretations of the term "merchandise." Further, there have been abuses in the manner in which

prizes are awarded to winning salesmen for their own and exclusive use. It is the Commissioner's opinion that if these contests are permitted to continue, the substance of Regulations No. 35 will have been whittled away.

In the interest of sound public policy, it is now the Commissioner's decision that sales promotional campaigns involving award of prizes in any form to salesmen of wholesalers in New Jersey, will no longer be permitted.

Accordingly, without prejudice to future consideration of sales contests should circumstances warrant it, it is the Commissioner's direction that your request for permission to project a contest for the promotion of \_\_\_\_\_ Blend, be herewith denied.

Very truly yours,  
ALFRED E. DRISCOLL,  
Commissioner.

By: John H. Michelson,  
Administrative Ass't.

NOTE: With reference to the above letter:

Presumably, the primary purpose of a so-called sales contest is to stimulate the sale of the beverage in question. It has been suggested that during the war period, with its incidental curtailment in manufacture and importation, a sales contest in the alcoholic beverage business is out of place.

It is further suggested that the same purpose may be accomplished by any one or more of the following:

1. Adjustment downward in the price to the consumer;
2. Increase in the mark-up to the retailer;
3. Favorable adjustment in the salesmen's salaries.

A. E. D.

### 13. FAIR TRADE - NOTICE OF NEXT PUBLICATION.

September 8, 1942

The next official publication of minimum resale prices, pursuant to the fair trade rules (Regulations No. 30), will become effective on or about Monday, September 28, 1942. New items and changes in old items must be filed at the offices of this Department not later than Tuesday, September 15, 1942.

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.

ALFRED E. DRISCOLL,  
Commissioner.

14. REGULATIONS NO. 34 - THE COMBINATION OF PRICE LISTS WITH ADVERTISING MATTER FOUND OBJECTIONABLE AND IS PROHIBITED, EFFECTIVE IMMEDIATELY.

TO ALL MEMBERS OF THE LIQUOR AND WINE INDUSTRY OF NEW JERSEY:

My attention is directed to the objectionable, though limited practice of printing wholesale price statements in combination with and as a part of advertising matter, and filing of the same with this Department pursuant to Regulations No. 34.

Be advised that it is now my decision that price lists may not be published as part of, or in combination with advertising matter of any nature, or mailed therewith to retail customers in New Jersey. It is determined that this is necessary in order to assure clarity and avoid any possible confusion among retail licensees served with wholesale price statements in accordance with Regulations No. 34.

In the future, wholesale price statements must be published and mailed separately and alone, and not be combined with news, advertising or any other matter which may divert the attention of retail licensees from the prices as filed.

Dated: September 8, 1942.

*Alfred E. Biscoe*  
Commissioner.

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