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

BULLETIN 691 JANUARY 23, 1946.

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

BULLETIN 691 JANUARY 23, 1946.

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In the Matter of Disciplinary Proceedings against RUTH BERNSTEIN T/a WESTFIELD LIQUORS 221 East Broad Street Westfield, N. J., Holder of Plenary Retail Distribution License D-5, issued by the Town Council of the Town of Westfield.	CONCLUSIONS AND ORDER

Herman C. Silverstein, Esq., Attorney for Defendant-licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads non vult to a charge alleging that, on November 29, 1945, she sold a 4/5 quart bottle of Guild Select Reserve Sherry Wine below the minimum retail price, in violation of Rule 6 of State Regulations No. 30.

On November 29, 1945 an investigator of the Department of Alcoholic Beverage Control purchased a 4/5 quart bottle of Guild Select Reserve Sherry Wine for 89¢. The Fair Trade price of this item was 99¢. (Bulletin 675).

Defendant contends that the price of the article was reduced pursuant to a written memorandum received from the manufacturer of the product. Licensees, however, must adhere to the retail prices set forth in the official minimum retail price lists published by the Department in its official bulletins and distributed to each plenary retail distribution and consumption licensee in the state. Cf. Re Tiger Food Company, Inc., Bulletin 377, Item 11.

Defendant has no prior adjudicated record. Therefore, I shall impose a minimum suspension of the license for a period of ten days, less five days for the plea, or a net suspension of five days. Re Zimmerman & Kawut, Bulletin 688, Item 14.

Accordingly, it is, on this 14th day of January, 1946,

ORDERED, that Plenary Retail Distribution License D-5, issued by the Town Council of the Town of Westfield to Ruth Bernstein, t/a Westfield Liquors, for premises 221 East Broad Street, Westfield, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. January 28, 1946, and terminating at 9:00 a.m. February 2, 1946.

ALFRED E. DRISCOLL
Commissioner.

2. LIMITATION OF LICENSES - SINCE JULY 1, 1937 MAY BE ENACTED ONLY BY ORDINANCE - NO POWER IN MUNICIPALITY TO ENACT BY MERE RESOLUTION.

RENEWAL - MEANING OF TERM "RENEWAL" AS DISTINGUISHED FROM "NEW" LICENSE - HEREIN DISCUSSION OF CIRCUMSTANCES UNDER WHICH ISSUANCE TO EX-LICENSEE-VETERAN OR TO EX-LICENSEE-VETERAN IN PARTNERSHIP WITH ANOTHER WOULD BE A "NEW" LICENSE BY STATUTORY DEFINITION, BUT WOULD NOT BE AN "ADDITIONAL" LICENSE IN THE PARTICULAR SITUATION.

January 14, 1946

Edgar C. Warren, Borough Clerk
Princeton, New Jersey.

Dear Mr. Warren:

This will acknowledge receipt of your letter of January 10th asking that we advise you on the following:

"1. A licensee having a Plenary Retail Distribution License was called into the Armed Forces in 1941. He surrendered his license and requested that same be held until he was discharged from service.

"The Mayor and Council advised the licensee that they would hold his license and not consider his a license a vacancy to be filled.

"This licensee has now made application with a partner for a Plenary Retail Distribution License.

"Is this a new license by having a partner or a renewal under our Resolution of 1937?

"2. The partner in this application is also a partner in a Plenary Retail Consumption License.

"Is there any provision of the State Laws which would prohibit said partner being interested as a partner in the two licenses?"

According to our records, the following resolution was passed by the Mayor and Council on November 3, 1937:

"WHEREAS, this body has, from time to time, issued certain Retail Consumption, Retail Distribution and Club Licenses; and

"WHEREAS, additional Club and Retail Consumption Licenses have, from time to time, been issued in the Borough of Princeton by the Commissioner of Alcoholic Beverage Control; and

"WHEREAS, after a careful study of the situation this body believes, that under conditions as they now exist, there is no need for any additional licenses, of any kind or sort, in relation to the sale of Alcoholic Beverages.

"NOW, THEREFORE, BE IT RESOLVED, That it is the sense of this body that there are sufficient licenses already issued in the Borough of Princeton to properly serve the needs of its inhabitants.

"And be it FURTHER RESOLVED, That it is the sense of this body that no licenses, in addition to those already in existence, be granted, unless it can be affirmatively shown that the issuance of such license or licenses would directly serve the public need and be for the benefit of the Community as a whole."

The 1937 resolution was a recorded significant expression of policy but had not, and has not, legal effect as a limitation upon the number of licenses. It was not, and is not, binding upon the municipal issuing authority. The reason is that under our Alcoholic Beverage Law the governing bodies of the various municipalities have, since July 1, 1937, had authority to limit the number of retail licenses only by ordinance. (Revised Statutes 33:1-40.) The cited statutory section provides that any such limitation adopted by resolution before July 1, 1937 shall continue in full force and effect until repealed, amended or otherwise changed by ordinance but the Borough's resolution was passed November 3, 1937.

Chapter 281 of the Laws of 1939, as amended by Chapter 187 of the Laws of 1944, provides that:

"1. Any license for a new license term, which is issued to replace a license which expired on the last day of the license term which immediately preceded the commencement of said new license term or which is issued to replace a license which will expire on the last day of the license term which immediately precedes the commencement of said new license term shall be deemed to be a renewal of the expired or expiring license; PROVIDED, that said license is of the same class and type as the expired or expiring license, covers the same licensed premises, is issued to the holder of the expired or expiring license and is issued pursuant to an application therefor which shall have been filed with the proper issuing authority prior to the commencement of said new license term or not later than thirty days after the commencement thereof. Licenses issued otherwise than as above herein provided shall be deemed to be new licenses." (Revised Statutes 33:1-96.)

It appears that the issuance of a license either to the ex-licensee veteran individually or to the ex-licensee veteran in partnership with another person would not be a license "in addition to those already in existence" within the meaning and intent of the quoted language of the 1937 resolution. On the other hand, it is clear that under P. L. 1944, c. 187, the issuance of a license either to the ex-licensee veteran individually or to the ex-licensee veteran in partnership with another person could not be a "renewal" but would be a new license in either case.

In respect to item 2 of your letter, there is nothing in the State Alcoholic Beverage Law or Regulations which would prohibit a partner in one retail license from being a partner in a second retail license. Under our Alcoholic Beverage Law, "The governing board or body of each municipality may, by ordinance, enact that no more than one retail license shall be granted to any person in said municipality and that said license shall cover only the licensed premises....." According to our records, no such ordinance has been adopted in the Borough of Princeton.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

By: Harold J. Saum
Ass't Deputy Commissioner.

3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM, IN VIOLATION OF RULE 6 OF STATE REGULATIONS NO. 30 - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against GREAT ATLANTIC & PACIFIC TEA CO. T/a THE GREAT ATLANTIC & PACIFIC TEA CO. 715 Bergen Avenue Jersey City 6, New Jersey, Holder of Plenary Retail Distribution License D-67, issued by the Board of Commissioners of the City of Jersey City.	CONCLUSIONS AND ORDER

A. Harry Moore, Esq., Attorney for Defendant-licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee has entered a plea of non vult to a charge alleging that, on December 7, 1945, it sold a 4/5 quart bottle of Roma Vintners Select Zinfandel wine and a 4/5 quart bottle of Roma Vintners Select Rhine wine below the minimum retail price, in violation of Rule 6 of State Regulations No. 30.

The licensee states that the violation would not have occurred if the manager of its store at 715 Bergen Avenue, Jersey City, had followed instructions. These instructions were set forth in a price list prepared at the home office and forwarded to defendant's manager. I have no reason to doubt the accuracy of the licensee's explanatory statement. There is no evidence indicating that the licensee deliberately or intentionally committed the violation.

The licensee, however, is responsible for the acts of its agents and employees and their carelessness does not excuse the violation of the law. Re Grant Lunch Corporation, Bulletin 517, Item 3.

The purpose of the Fair Trade regulation is to preserve an orderly market; to prevent predatory price wars, and to protect the public against the evils of so-called "liquor bargains." These harmful activities may be (and frequently are) the product of price cutting irrespective of intent or cause.

The licensee has no previous adjudicated record. In view of the plea and all the circumstances, I shall suspend its license for a minimum period of ten days, less five days for the plea, or a net suspension of five days. Cf. Re Zimmerman & Kawut, Bulletin 688, Item 14.

Accordingly, it is, on this 16th day of January, 1946,

ORDERED, that Plenary Retail Distribution License D-67, issued by the Board of Commissioners of the City of Jersey City to Great Atlantic & Pacific Tea Co., t/a The Great Atlantic & Pacific Tea Co., for premises 715 Bergen Avenue, Jersey City, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. January 21, 1946, and terminating at 9:00 a.m. January 26, 1946.

ALFRED E. DRISCOLL
Commissioner.

4. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against RISVEGLIO SOCIETY T/a RISVEGLIO SOC. 51-53 Talmadge Avenue Bound Brook, N. J., Holder of Plenary Retail Consumption License C-17, issued by the Borough Council of the Borough of Bound Brook.	)	CONCLUSIONS AND ORDER

Samuel Chiaravalli, 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 a charge alleging that, on November 16, 1945, it possessed a 4/5 quart bottle of "Seagram's Five Crown Blended Whiskey", which bottle contained an alcoholic beverage not genuine as labeled, in violation of R. S. 33:1-50.

Since there is no previous record and no aggravating circumstances appear to have attended the instant violation, the license will be suspended for a period of fifteen days. Cf. Re Rudolph, Bulletin 680, Item 1.

Accordingly, it is, on this 15th day of January, 1946,

ORDERED, that Plenary Retail Consumption License C-17, issued by the Borough Council of the Borough of Bound Brook to Risveglio Society, t/a Risveglio Soc., for premises 51-53 Talmadge Avenue, Bound Brook, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. January 21, 1946, and terminating at 2:00 a.m. February 5, 1946.

ALFRED E. DRISCOLL
Commissioner.

5. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES, JUKE BOX AND OTHER FIXTURES AND FURNISHINGS IN SPEAKEASY ORDERED FORFEITED.

In the Matter of the Seizure on November 17, 1945 of a quantity of alcoholic beverages, a music machine, various fixtures and furnishings, and other personal property, at 38 South Smith Street, in the Borough of Penns Grove, County of Salem and State of New Jersey.	Case No. 6910 ON HEARING CONCLUSIONS AND ORDER

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 a quantity of alcoholic beverages, a music machine, a cash register and $16.23 in currency, various fixtures and furnishings and other personal property, itemized in an inventory hereinafter set forth, seized from John Thompson on November 17, 1945, at 38 South Smith Street, Penns Grove, New Jersey, constitute unlawful property and should be forfeited.

On November 16, 1945, at about 2:15 a.m., two ABC agents, on an undercover investigation, entered a one-story frame dwelling at the above address. There was a bar, a cash register, tables, chairs and a juke box in one of the rooms. A large table apparently used for gambling purposes was in a rear room. Two other rooms contained bedroom furniture.

When the agents entered they observed that a woman was tending bar. There were about seven patrons in the barroom. One of the agents ordered a glass of whiskey and the other ordered a bottle of beer. These drinks were served to the agents by the woman bartender, who accepted payment for the drinks. Some of the other patrons were also served with drinks of alcoholic beverages.

The agents left without disclosing their identity and made arrangements to raid the place the following day. Accordingly, the next day, at about 1:10 a.m., these agents, accompanied by other ABC agents and a State Trooper, went to the premises in question. These two agents entered first and ordered and were served two drinks of alcoholic beverages, which they had before them when the other officers entered. These drinks were served by Henry Willitt, who was tending bar and who had accepted payment for the drinks from the agents. Other patrons, who were in the place at the time, had also purchased drinks of alcoholic beverages from Willitt.

John Thompson, the proprietor of the establishment, was sleeping in one of the bedrooms. The agents obtained signed statements from Willitt and Thompson. The latter, in his statement, says that he has been operating a "speakeasy" at the premises for about six months and that Willitt, although not regularly employed there, was helping him out. Willitt admitted making the sales of alcoholic beverages to the agents on the night in question and stated that in selling such alcoholic beverages he was acting on Thompson's

behalf. Neither Thompson nor Willitt held any license authorizing either of them to sell or serve alcoholic beverages.

The agents seized a quantity of beer and whiskey which was behind the bar, the bar, the cash register and money therein, the cooler, tables, chairs, the juke box and other equipment in the premises.

Willitt was arrested and charged with the unlawful sale of alcoholic beverages and Thompson was arrested and charged with aiding and abetting the unlawful sale of alcoholic beverages and possession of alcoholic beverages with intent to sell the same in violation of the law.

Thompson has evidently operated a speakeasy at the premises for a considerably longer period of time than he says because, on September 16, 1944, he was arrested by ABC agents for a similar offense at the premises in question, pleaded guilty in the Salem County Court of Special Sessions, and, on December 14, 1944, was given a suspended prison sentence, fined $150.00, and placed on probation.

It is apparent that the imposition of a fine does not discourage the unlawful activities of these persistent speakeasy operators. Actual imprisonment in jail seemingly is the only penalty that will teach these persons to discontinue their bootlegging activities.

The evidence presented establishes that Thompson intended to sell the beer and whiskey found in his premises. Since he was not licensed to deal in alcoholic beverages, such alcoholic beverages are illicit, and are, together with the cash receipts of the unlawful enterprise and other personal property seized, subject to forfeiture. R. S. 33:1-1(i) and (y), R. S. 33:1-2, R. S. 33:1-66.

When the matter came on for hearing pursuant to R.S. 33:1-66, no one appeared to oppose forfeiture of the seized property.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" hereinafter set forth, 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: January 15, 1946.

SCHEDULE "A"

50 - bottles of beer
1 - bottle of whiskey
1 - Florence oil stove
1 - Coca Cola cooler
1 - National Cash Register with $16.23 in currency
1 - bar
1 - Rock-Ola Luxury Music Machine, Serial No. 58802
3 - wooden tables with metal tops
9 - chairs
10 - whiskey glasses
1 - General Electric Fan, Serial No. 5KH45AB579B
2 - sets of dice

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

6. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1ST, 1945 TO DECEMBER 31ST, 1945 AS REPORTED TO THE COMMISSIONER OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R. S. 33:1-19.

CLASSIFICATION OF LICENSES

	Plenary Retail Consumption		Plenary Retail Distribution		Club		Limited Retail Distribution		Seasonal Retail Consumption		Number Surrendered Revoked Expired	Number Licenses in Effect	Tota
County	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid			Fees Paid
Atlantic	460	$ 171,973.96	61	$ 20,440.11	10	$ 950.00						531	$ 193,3
Bergen	805	267,262.36	267	62,755.17	45	4,138.84	26	$1,173.29	5	$ 975.00	6	1,142	336,3
Burlington	180	61,517.58	21	4,894.93	31	3,804.73	1	25.00				233	70,2
Camden	449	196,733.37	65	22,338.49	57	5,261.23			4	657.20	6	569	224,9
Cape May	126	56,402.19	10	2,950.00	11	1,055.00						147	60,4
Cumberland	81	30,950.00	10	2,600.00	27	3,560.00						118	37,1
Essex	1,371	691,348.55	348	163,191.34	76	10,034.53	20	970.30				1,815	865,5
Gloucester	107	30,250.00	10	1,600.00	6	366.30						123	32,2
Hudson	1,549	670,610.66	285	111,249.24	54	6,963.43	44	1,691.08			2	1,930	790,5
Hunterdon	77	19,487.61	1	200.00	3	561.78					2	79	20,2
Mercer	421	177,200.00	44	11,200.00	38	4,840.00			1	94.54	1	503	193,3
Middlesex	609	236,025.18	52	14,137.07	37	3,260.82	1	25.00			2	697	253,4
Monmouth	513	209,152.60	92	25,272.69	23	2,789.82	6	210.61	24	8,103.49	25	633	245,5
Morris	329	96,937.95	76	18,443.51	29	2,388.39	1	25.00	7	1,131.44	8	434	118,9
Ocean	172	79,509.09	30	11,842.00	8	750.69						210	92,1
Passaic	874	335,173.73	142	37,571.05	27	3,370.00	10	443.02			1	1,051	376,5
Salem	50	15,900.00	4	550.00	9	774.45						63	17,2
Somerset	188	63,625.04	27	6,250.38	10	1,017.11						225	70,8
Sussex	150	31,828.62	12	1,792.00	2	100.00			3	415.17	3	164	34,1
Union	538	264,909.05	134	44,722.75	54	6,300.00	15	711.38				742	316,6
Warren	135	35,560.96	13	2,407.50	22	2,195.28			2	263.55	2	170	40,4
TOTALS	9,184	$3,742,359.40	1,704	$566,408.23	579	$64,482.40	124	$5,274.68	46	$11,640.39	58	11,579	$4,390,1

ALFRED E. DRISCOLL
Commissioner.

Respectfully submitted,
Erwin B. H[illegible]k
Deputy Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM, IN VIOLATION OF RULE 6 OF STATE REGULATIONS NO. 30 - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
	)	
FLORENCE MINKOFF & EVELYN SCHENGRUND T/a CITY HALL LIQUOR STORE 361 Main Street East Orange, N. J.,	)	CONCLUSIONS AND ORDER
Holders of Plenary Retail Distribution License D-1, issued by the Municipal Board of Alcoholic Beverage Control of the City of East Orange.	)	

Florence Minkoff & Evelyn Schengrund, Defendant-licensee, Pro se.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendants pleaded non vult to a charge alleging the sale of a 4/5 quart bottle of Hildick Five Apple Brandy below the minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

On December 13, 1945 one of the defendants' employees sold the bottle in question to an ABC agent for the sum of $3.80. The minimum consumer price, as officially established in Bulletin 668, page 5, is $3.84.

Since the defendants' record is otherwise clear, the usual ten-day penalty will be imposed. A remission of five days for the plea results in a net suspension of five days.

Accordingly, it is, on this 15th day of January, 1946,

ORDERED, that Plenary Retail Distribution License D-1, issued by the Municipal Board of Alcoholic Beverage Control of the City of East Orange to Florence Minkoff and Evelyn Schengrund, t/a City Hall Liquor Store, for premises 361 Main Street, East Orange, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. January 21, 1946, and terminating at 9:00 a.m. January 26, 1946.

ALFRED E. DRISCOLL
Commissioner.

8. APPELLATE DECISIONS - JASINSKI v. JERSEY CITY.

FRANCIS JASINSKI,)

Appellant,)

-vs-) ON APPEAL CONCLUSIONS AND ORDER

BOARD OF COMMISSIONERS OF THE CITY OF JERSEY CITY,)

Respondent)

Harry Schwartz, Esq., Attorney for Appellant.
John J. Meehan, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of appellant's application for transfer of his plenary retail consumption license from 265 Grand Street to 271 Grand Street, in the City of Jersey City.

The transfer was refused because there is an existing consumption license outstanding at 273 Grand Street, immediately adjacent to the premises to which the appellant seeks to move.

The appellant's present tavern at 265 Grand Street is one of three consumption establishments now located on the southerly side of Grand Street, between Barrow and Grove Streets. It is approximately one hundred and fifty feet removed from the tavern at 255 Grand Street and is separated from the third tavern at 273 Grand Street by two vacant 25-foot lots and the proposed location.

A place-to-place transfer within the same general area may not be denied merely because a municipality desires to reduce the number of licensed establishments in that area. Cf. Costa v. Verona, Bulletin 501, Item 2; Donovan v. South River, Bulletin 537, Item 2. The same result is reached in those cases where an intra-neighborhood transfer will not disturb the existing concentration of licenses in that neighborhood. Cf. Metropolitan Liquor Corporation v. Jersey City, Bulletin 645, Item 1; Hoffman v. Jersey City et al., Bulletin 677, Item 12.

However, where a place-to-place transfer, albeit in the same vicinity, will appreciably aggravate the geographical distribution of licenses in that vicinity, it has been held not unreasonable for a municipality to refuse such a transfer. Cf. Willner's Liquors v. Camden, Bulletin 669, Item 14, and cases therein cited.

So, in this case, the refusal to permit the appellant to move from his present site to one which will result in placing two taverns on contiguous properties, is neither unreasonable nor arbitrary.

On behalf of the respondent, evidence was presented that, ever since 1937, it has steadfastly refused to permit the holders of similar types of licenses to locate themselves next door to one another and all applications seeking to accomplish that purpose have been uniformly denied. It admitted that, in two instances since 1937, the holder of a distribution license was allowed to move adjacent to an existing consumption licensee. In one case, the licenses were owned by the same individual and, in the other, the holder of the consumption license operated his premises principally as a bona fide restaurant. Neither or both of these transfers

sustain the appellant's contention that the respondent was guilty of discrimination by its denial of his instant application.

The appellant, who has maintained his present location ever since March 1934, urges that the vacant premises at 271 Grand Street, owned by his wife, will afford him more space than he now has, and is level with the sidewalk, whereas there are two steps leading to the entrance of his present tavern. While it may be true that the proposed premises are superior, from an economic standpoint, to those presently operated by the appellant, such personal advantage to the appellant cannot prevail over the paramount policy, adopted by the respondent in the public interest, against setting up "rum rows" in its municipality.

The action of respondent is affirmed.

Accordingly, it is, on this 17th day of January, 1946,

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

ALFRED E. DRISCOLL
Commissioner.

9. APPELLATE DECISIONS - NEWCOMBE v. NEWARK - DISCONTINUED.

HARRY J. NEWCOMBE, Appellant, -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, Respondent	ON APPEAL ORDER OF DISCONTINUANCE

John F. Connolly, Esq., Attorney for Appellant.
Thomas L. Parsonnet, Esq., by Charles Gansler, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from respondent's denial of appellant's application for a place-to-place transfer of his plenary retail consumption license from 790-1/2 to 790-790-1/2 Mt. Prospect Avenue, Newark.

The attorney for the appellant has requested that the appeal be discontinued and has submitted formal stipulation of discontinuance, duly consented to by the attorney for the respondent.

Since no reason appears to the contrary,

It is, on this 18th day of January, 1946,

ORDERED, that the within appeal be and the same is hereby discontinued.

ALFRED E. DRISCOLL
Commissioner.

10. APPELLATE DECISIONS - THE GREAT ATLANTIC & PACIFIC TEA CO. v. NEWARK - DECISION BY MUNICIPALITY BASED UPON AN ADMITTED ERRONEOUS CONSTRUCTION OF THE LAW ORDERED REMANDED FOR FURTHER PROCEEDINGS.

THE GREAT ATLANTIC & PACIFIC TEA CO., Appellant,	)	ON APPEAL
-vs-	)	ORDER
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, Respondent	)	

William K. Flanagan, Esq., Attorney for Appellant.
Thomas L. Parsonnet, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is taken from the respondent's refusal to transfer the appellant's plenary retail distribution license from 483 Orange Street to 178-180 Elizabeth Avenue, in the City of Newark.

The petition of appeal sets forth the following reasons alleged to have been given by the respondent for the refusal:

"(1) Because the said applicant had vacated the said premises at #483 Orange St., Newark, N. J., it thereby failed to retain possession of its said plenary retail distribution license No. D152.

"(2) Because there was no possession (by the said applicant) of a premises to transfer from, there was of necessity no application placed before the said respondent."

Subsequent to the filing of the appeal and prior to hearing, the respondent filed in these proceedings a resolution, signed by all three of its members, from which it appears that the denial of the application resulted from the respondent's "impression" that no application for transfer could be granted where the applicant had vacated its licensed premises prior to filing the application. Since it admittedly proceeded under an erroneous principle of law, the respondent moves that the Commissioner remand "said cause to this Board so that a future day for hearing might be set with due notice to the licensee or any objector, after which a new determination on the requested transfer might be made by this Board."

The appellant, through its attorney, has stipulated that "the above appeal be referred back to the Respondent for further consideration and determination."

Since no reason appears to the contrary on the record presented, the motion will be granted.

Accordingly, it is, on this 18th day of January, 1946,

ORDERED, that the proceedings herein be and the same are hereby remanded to the respondent for its further consideration consistent with law and the aforesaid resolution.

ALFRED E. DRISCOLL
Commissioner.

11. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against RICHARD ZUK T/a ZUK'S CASTLE GRILL Greenwood Lake Road Ringwood Borough P. O. Wanaque, R.F.D., N. J., Holder of Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of Ringwood.	CONCLUSIONS AND ORDER

Richard Zuk, Defendant-licensee, Pro se.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that he possessed one 4/5 quart bottle of "Four Roses Rye A Blend of Straight Whiskies" and one 4/5 quart bottle of "Old Crow Brand - Kentucky Straight Bourbon Whiskey", which bottles contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

During the course of a retail inspection of the defendant's licensed premises on November 2, 1945, an ABC investigator seized the two bottles of whiskey in question after preliminary analysis indicated the contents thereof not to be genuine as labeled. Subsequent analysis by the Departmental chemist of the contents of the bottles disclosed variations in acids and proof when compared with an analysis of genuine samples.

Defendant disclaimed all knowledge of the violation. It is well established that a licensee must be held strictly accountable for any "refills" found in his stock of liquor. Cf. Re Kurian, Bulletin 517, Item 2.

Defendant has no prior adjudicated record. In view of that fact and that no aggravating circumstances appear herein, I shall suspend his license for the minimum period of fifteen days. Re Hartfield, Bulletin 683, Item 10.

Accordingly, it is, on this 18th day of January, 1946,

ORDERED, that Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of Ringwood to Richard Zuk, t/a Zuk's Castle Grill, for premises on Greenwood Lake Road, Ringwood Borough, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 3:00 a.m. January 23, 1946, and terminating at 3:00 a.m. February 7, 1946.

ALFRED E. DRISCOLL
Commissioner.

12. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES, JUKE BOX, FIXTURES AND FURNISHINGS IN SPEAKEASY ORDERED FORFEITED.

In the Matter of the Seizure on November 17, 1945 of a quantity of alcoholic beverages, a music machine, various fixtures and furnishings and other personal property at 76 Poplar Street, in the Borough of Penns Grove, County of Salem and State of New Jersey.	Case No. 6911 ON HEARING CONCLUSIONS AND ORDER

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 a quantity of alcoholic beverages, a music machine, a cash register, $14.87 in currency and various fixtures and furnishings and other personal property, itemized in a schedule hereinafter set forth, seized on November 17, 1945 at 76 Poplar Street, Penns Grove, New Jersey, constitute unlawful property and should be forfeited.

On November 16, 1945, at about 2:15 a.m., an A.B.C. agent went to the dwelling at the above address on an undercover investigation of a specific complaint that speakeasy activities were there being carried on. The agent was admitted into the house after he informed a man who came to the door that he wanted a drink. Upon entering he was told by this person that a woman, in the room, would wait on him. The agent was then directed to the barroom, in which there was a bar, a cash register, a juke box and tables and chairs. He ordered a drink of whiskey from this woman, who served him and accepted payment therefor. Two couples were in another room drinking what appeared to be alcoholic beverages.

The agent left without disclosing his identity. He returned to the premises at about 1:05 a.m. the next day in company with other A.B.C. agents and two State Troopers, who remained outside. When the agent entered the barroom on this occasion, two women patrons and the man who had admitted him the previous day were there, and the same woman was tending bar. He ordered whiskey and a bottle of beer from this woman, who served him and accepted payment therefor. Soon thereafter the other agents and the State Troopers entered and identified themselves to Ida Carter, the woman who was tending bar, and to Alton Thomas, the man who had admitted the agent on his first visit.

Thomas gave the agents a signed statement in which he acknowledges that he had directed the agent to the barroom on the first occasion and that he observed the agent pay Ida Carter for drinks of alcoholic beverages on the second occasion. Ida Carter also gave the officers a signed statement, in which she states that she had been running a speakeasy at the premises and admits that she sold alcoholic beverages to the agent on the occasions in question. Neither Ida Carter nor Alton Thomas held any license authorizing either of them to sell or serve alcoholic beverages.

The agents seized a number of bottles of beer and a bottle of whiskey which was behind the bar, the bar, a Coca Cola cooler, a cash register and money therein, a box with dice and money therein, tables, chairs, a juke box, and other equipment in the premises.

Ida Carter was arrested and charged with the unlawful sale of alcoholic beverages and possession of alcoholic beverages with intent to sell the same in violation of the law. Alton Thomas was arrested and charged with aiding and abetting such violations.

It is obvious from the evidence that Ida Carter intended to sell the beer and whiskey found in the dwelling. Since she was not licensed to sell alcoholic beverages, such alcoholic beverages are illicit, and are, together with the cash receipts of the speakeasy and other money and personal property seized, subject to forfeiture. R. S. 33:1-1(i) and (y), R. S. 33:1-2, R. S. 33:1-66.

When the matter came on for hearing, pursuant to R.S. 33:1-66, no one appeared to oppose forfeiture of the seized property.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" hereinafter set forth, 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: January 21, 1946

SCHEDULE "A"

59 - bottles of beer
1 - bottle of whiskey
1 - counter (bar)
1 - National Cash Register #5661623 with $10.39 in currency
1 - Coca Cola Cooler
96 - empty beer bottles
12 - whiskey glasses
1 - Wurlitzer Music Machine #252804
4 - tables
10 - chairs
1 - box containing a set of dice and $4.48 in currency

13. NOTICE - HEREIN OF APPLICATION FORMS FOR RETAIL LICENSES FOR THE LICENSE YEAR 1946-47.

January 22, 1946

TO ALL MUNICIPAL ISSUING AUTHORITIES:

No substantial changes are contemplated in the application forms for retail licenses for the next fiscal year beginning July 1, 1946.

It is suggested, however, that Question No. 11 in the application form for municipal retail licenses, except Club Licenses, and Question No. 7 in the application for Club License, be changed to read: "Will all Federal licenses, permits or stamps necessary to the lawful conduct of the business be obtained?"

The reason for the above suggested change is that the Alcoholic Beverage Law (R. S. 33:1-25) no longer requires that photostatic copies of Federal licenses, permits and stamps or other evidence in lieu thereof, be submitted with an application for retail license. The purpose of the question as revised is merely to put the applicant on notice with respect to complying with any requirements of Federal authorities.

The form of application for municipal retail licenses and for Club licenses may be found in Bulletin 650, Items 2 and 3 respectively. The license certificate forms as prescribed in Items 4, 5, 6, 7 and 8 in Bulletin 395, will continue in effect except, of course, for the necessary changes in expiration date.

It is extremely essential that applicants be required to answer all questions fully and completely. Under no circumstances should an application be passed upon unless this is complied with.

The license issuing authorities are urged to take immediate steps to obtain a sufficient supply of license application forms and certificates at the earliest possible moment so that they will be prepared when the time comes for renewal of licenses for the next fiscal year.

Alfred E. Driscoll
Commissioner.