

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

BULLETIN 549

JANUARY 26, 1943.

1. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN APPLICATION FOR LICENSE CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE (DISQUALIFIED BECAUSE OF RESIDENCE) TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - ILLEGAL SITUATION CORRECTED - 30 DAYS' SUSPENSION.

DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION FOR EMPLOYMENT PERMIT CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - PERMIT PRIVILEGE SUSPENDED FOR BALANCE OF TERM.

In the Matter of Disciplinary Proceedings against)

CROWN LIQUOR STORE, INC.)
1004 Atlantic Avenue)
Atlantic City, N. J.,)

Holder of Plenary Retail Distribution License D-9 issued by the Board of Commissioners of the City of Atlantic City, and transferred during the pendency of these proceedings to)

ALBERT PELL)

for the same premises.)

-----)
In the Matter of Disciplinary Proceedings against)

HYMAN SOLODAR)
15 S. Virginia Ave.)
Atlantic City, N. J.,)

CONCLUSIONS
AND ORDERS

Holder of Employment Permit No. 44, issued by the State Commissioner of Alcoholic Beverage Control.)

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In the Matter of Disciplinary Proceedings against)

GOLDIE SOLODAR PELL)
15 S. Virginia Ave.)
Atlantic City, N. J.,)

Holder of Employment Permit No. 46, issued by the State Commissioner of Alcoholic Beverage Control.)

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Joseph H. Blumberg, Esq., Attorney for Defendant-Licensee and Defendant-Permittees.

Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee pleaded guilty to a charge alleging that it falsely concealed in its license application that Hyman Solodar was the real and beneficial owner of its corporate stock, in violation of N. S. 33:1-25.

The defendant-permittees pleaded guilty to a charge alleging that they falsely concealed in their permit applications that they each had an interest in the plenary retail distribution license issued to the defendant-licensee, in violation of R. S. 33:1-25.

It appears that, in October 1940, Hyman Solodar purchased the business in question. Because he was not a five-year resident of this state and therefore ineligible to hold a liquor license in his name (see R. S. 33:1-25), he conceived the idea of forming a corporation and having his interest therein held for him by other persons.

This situation continued until October 1942, when the licensed business was sold, and the license transferred, to one Albert Pell. From the proof disclosed by the record, the sale and transfer to Albert Pell appear to be bona fide, thus correcting the prior unlawful situation.

The license will, in accordance with the condition imposed by the issuing authority making the transfer of the license subject to the outcome of these proceedings, be suspended for thirty days. Cf. Re Lehtonen, Bulletin 540, Item 10.

The permit of Goldie Solodar Pell, who nominally held one share of stock in the corporation, and the permit of Hyman Solodar, who was the real owner of all the corporate stock, will each be suspended for the balance of the fiscal year, viz., until midnight June 30, 1943. Cf. Re Lickstein, Bulletin 511, Item 3; Re Schneider, Bulletin 512, Item 6; Re Wuorela, Bulletin 540, Item 11.

Accordingly, it is, on this 19th day of January, 1943,

ORDERED, that Plenary Retail Distribution License D-9, heretofore issued by the Board of Commissioners of the City of Atlantic City to Crown Liquor Store, Inc., for premises 1004 Atlantic Avenue, Atlantic City, and transferred during the pendency of these proceedings to Albert Pell for the same premises, be and the same is hereby suspended for thirty (30) days, commencing at 7:00 A. M. on January 25, 1943, and terminating at 7:00 A. M. on February 24, 1943; and it is further

ORDERED, that Employment Permit No. 44, heretofore issued to Hyman Solodar by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for the balance of its term, effective immediately; and it is further

ORDERED, that Employment Permit No. 46, heretofore issued to Goldie Solodar Pell by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for the balance of its term, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

2. APPELLATE DECISIONS - AMATO v. HARRISON - CONCLUSIONS - ORDER.

OCTAVIUS L. AMATO,)
)
 Appellant,)
)
 -vs-)
)
 TOWN COUNCIL OF THE TOWN OF)
 HARRISON,)
)
 Respondent)
 -----)

ON APPEAL
CONCLUSIONS

James P. Lordi, Esq., Attorney for Appellant.
Michael J. Bruder, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of a transfer of plenary retail consumption license C-44 from Anthony J. Nasta to appellant. The premises in question are located at 756 Harrison Avenue, Town of Harrison, N. J.

Respondent denied the license because (1) appellant is an unfit person to hold a license; (2) it was rumored that the transfer involved a purchase by appellant for the benefit of his brother, Nick Amato; and (3) complaints had been received by the Police Department concerning the present operation of the licensed premises.

As to (1): It appears from the record that appellant has never been convicted of a crime involving moral turpitude. It does not follow, however, that he is, therefore, entitled to a liquor license. A license is a privilege. Respondent has the power and is under the duty to examine the character and fitness of applicants and to deny the applications of those who are determined to be unfit. On appeal such determination will be given great weight and, if reasonable, will be sustained. Muncey v. Millville, Bulletin 425, Item 6, and cases therein cited.

The question to be decided herein is whether respondent's decision that appellant is unfit to hold a license was reasonable.

Appellant is one of a large family, all of whom apparently are respectable citizens except Nick Amato, who has a long criminal record. Appellant is now twenty-nine years of age, has resided at all times in New Jersey, is married and the father of one child. In 1930 he was arrested on a charge of grand larceny but, in a Police Court, was found not guilty. In 1932 he was arrested for loitering, was found guilty in a Police Court and received a suspended sentence of sixty days. His record is otherwise clear. He testified that he is a graduate of the University of South Carolina, class of 1937; that, between 1937 and 1941, he was employed from time to time as a substitute teacher in the schools of the City of Newark; that, at other times during that period, he worked for a publishing concern, and that, since February 1942, he has owned and operated a gasoline station. Both of his arrests, which took place when he was seventeen and nineteen years of age, seem to have resulted from the fact that he was found associating at that time with his brother Nick. There is no evidence that he was otherwise connected with Nick's unlawful activities. Considering all of these facts and his good record during the past ten years, I find that respondent's conclusion as to (1) was unreasonable.

As to (2): Appellant testified that, in order to purchase this business, he borrowed \$1500.00 from his mother-in-law, invested \$400.00 of his own money and agreed to pay the balance of the purchase price to Anthony J. Nasta in installments. He denies that his brother Nick has made any contribution to the purchase price and states that his brother is to have nothing to do with the business. On the record presented, I am forced to conclude that there is no evidence that appellant is acting as a "front" for Nick Amato.

As to (3): Captain Higgins of the Harrison Police Department testified that during the past year he has received numerous complaints as to the conduct of patrons who leave the licensed premises, and that the Newark Police advised him that known criminals frequent the premises. He admitted, however, that his frequent investigations had never disclosed any evidence to support these complaints. Appellant has had nothing to do with the past conduct of the licensed premises. If he is given an opportunity to conduct the business and evidence is found to substantiate these or other complaints, disciplinary proceedings may be instituted to suspend or revoke, or respondent may refuse to renew the license.

Respondent is to be commended for its careful study and scrutiny of the facts of this case. However, while the record is not sufficient to support denial of the transfer, I am faced, on one hand, with a suspicion, and no more, that Nick Amato may be interested in this business and, on the other hand, with the fair-minded rule that Nick's sins should not be visited upon appellant merely because they are brothers. Propeller Cafe, Inc. v. Newark, Bulletin 485, Item 1; Calabrese v. Newark, Bulletin 506, Item 10. Justice may be done to appellant and at the same time the possibility of a "front" may be removed if appellant will consent to a condition barring his disqualified brother from the licensed premises.

Accordingly, no order will be entered herein at this time. Appellant may advise me in writing within ten days that he is willing to accept the transfer subject to the following condition:

"This transfer from Anthony J. Nasta to Octavius L. Amato is subject to the condition that Nick Amato shall not be permitted on the licensed premises at any time for any reason whatsoever."

If such consent is received within ten days, an order will be entered herein reversing the action of respondent and directing respondent to transfer the license subject to said condition; otherwise, an order will be entered affirming the action of respondent and dismissing the appeal.

It should also be pointed out that, if an order of reversal is entered, appellant will have no right to use the trade name "Miami Gardens" unless and until he presents proof to the municipal Clerk that he has filed a certificate pursuant to the provisions of R. S. 56:1-2.

ALFRED E. DRISCOLL
Commissioner.

Dated: January 14, 1943.

OCTAVIUS L. AMATO,)

Appellant,)

-vs-

ON APPEAL
ORDER

TOWN COUNCIL OF THE TOWN OF)
HARRISON,)

Respondent)
-----)

James P. Lordi, Esq., Attorney for Appellant.
Michael J. Bruder, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant having advised me in writing that he is willing to accept the transfer of the license subject to the condition referred to in the Conclusions heretofore entered herein,

It is, on this 18th day of January, 1943,

ORDERED, that the action of respondent, in refusing to transfer to appellant the plenary retail consumption license of Anthony J. Nasta for 756 Harrison Avenue, Town of Harrison, be and the same is hereby reversed, and respondent is directed to execute forthwith the transfer applied for subject to the following express condition to be inserted on the license:

"This transfer, from Anthony J. Nasta to Octavius L. Amato, is subject to the condition that Nick Amato shall not be permitted on the licensed premises at any time for any reason whatsoever."

ALFRED E. DRISCOLL
Commissioner.

3. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION FOR EMPLOYMENT PERMIT CONCEALING CRIMINAL RECORD - EMPLOYMENT PERMIT REVOKED.

In the Matter of Disciplinary)
Proceedings against)

DOMENICK BOCCACCINO)
River Vale Road and)
Prospect Ave.)
River Vale, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Employment Permit)
No. 2382, issued by the State)
Commissioner of Alcoholic)
Beverage Control.)
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Chandless, Weller & Kramer, Esqs., by Dominick Fondo, Esq.,
Attorneys for Defendant-Permittee.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant has pleaded non vult to a charge alleging that he falsely denied in his permit application that he had ever been convicted of a crime, in violation of R. S. 33:1-25.

Defendant, an Italian national, was found employed on licensed premises without a permit, in November 1940. He thereupon applied for an employment permit which was issued to him on December 6, 1940. In that application he answered, in the negative, the question reading: "Have you ever been convicted of any crime?" A similar question in each of the two succeeding permit applications filed by him were answered in similar fashion.

The defendant admits that on February 2, 1932 he was found guilty of the crime of second degree arson and sentenced to an indeterminate jail term of two and a half to five years in Sing Sing State Prison. When first questioned concerning his false answers to the various permit applications, he attempted to place the blame on his own illiteracy and the fact that the persons who actually filled out the applications for him had not read the particular question to him. When pressed for a definite explanation on cross-examination, he finally admitted that he had deliberately concealed his conviction because he "didn't want them to know I had a record against me."

The permit will be revoked. Cf. Re Bernabo, Bulletin 543, Item 13.

Accordingly, it is, on this 19th day of January, 1943,

ORDERED, that Employment Permit No. 2382, heretofore issued to Domenick Boccaccino by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

- 4. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN APPLICATION FOR LICENSE CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE LICENSE PRIVILEGE - CHARGES DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF - SALE OF ALCOHOLIC BEVERAGES BY CLUB LICENSEE TO NON-MEMBERS IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 7 AND R. S. 33:1-2 - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against MEADOWBROOK SOCIAL CLUB 725 North Clinton Avenue Trenton, N. J., Holder of Club License CB-15, issued by the Board of Commissioners of the City of Trenton.

CONCLUSIONS AND ORDER

Felcone & Felcone, Esqs., by Joseph J. Felcone, Esq., Attorneys for Defendant-Licensee. Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

There was served upon defendant-licensee a copy of the following charges:

"1. In your applications for licenses dated June 10, 1941 and June 9, 1942, filed with the Board of Commissioners of the City of Trenton, upon which Club Licenses CB-15 for the years 1941-42 and 1942-43 were granted to you, you falsely stated 'No' in answer to Question 30 in the 1941-42 application and Question 29 in the 1942-43 application, which questions ask: '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 Charles Soriero was so interested in that he was the true owner of the licensed business; said false statement being in violation of R. S. 33:1-25.

"2. From in and about October 1939 and until the present time, you knowingly aided and abetted Charles Soriero, a non-licensee, to exercise the rights and privileges of your license contrary to R. S. 33:1-26, in violation of R.S. 33:1-52.

"3. On or about March 17, 1942 you sold alcoholic beverages to persons other than bona fide members of your club and their bona fide guests, in violation of Rule 5 of State Regulations No. 7.

"4. In making the said sales of alcoholic beverages on the aforesaid date to persons other than bona fide members of your club and their bona fide guests, you also violated R. S. 33:1-2, in that your sales of such beverages were not pursuant to and within the terms of your license as defined by R. S. 33:1-12(5)."

Defendant pleaded not guilty as to charges (1) and (2), and guilty as to charges (3) and (4).

As to charges (1) and (2): The above charges were instituted after our investigators had ascertained that Charles Soriero was receiving a salary of \$25.00 per week; that proper records were not available as to the receipts and disbursements received at the bar; and that some alleged members could not be found at the addresses appearing in the club's records.

It appears from the evidence given at the hearing that the defendant club was originally organized under the name of "Yankee Boys" in 1929 or 1930. It changed its name to "Meadowbrook Social Club" about the year 1933. During the entire period of existence the club has had its headquarters at 725 North Clinton Avenue, Trenton. It has held a club license continuously since Repeal.

Charles Soriero is President of the club and acted as bartender at a weekly salary until some time in June 1942 when he obtained other employment. He testified that he did not receive any money, in excess of his weekly salary, from the sale of alcoholic beverages on the licensed premises. The club apparently has elected a vice-president, treasurer, recording secretary and financial secretary, and appointed a steward. There is testimony that the license fees have been paid from the money received from the sale of alcoholic beverages, and that any profits received from such sales have been used to buy equipment for athletic teams sponsored by the club and to finance social affairs for the benefit of all the members.

The method of operation by the club is open to criticism. It is evident that the minutes and records have been kept in a very lax fashion. If the club has not already made arrangements to do so, it must arrange at once to turn over the money received from the sale of alcoholic beverages to its proper officers, who should pay all bills,

salaries and other expenses and keep proper records. The minute book and list of members must be brought up to date immediately.

From all the evidence, however, I conclude that the Department has not sustained the burden of proof in showing that defendant is guilty as to charges (1) or (2). Cf. Re 15th Ward Political Club, Bulletin 399, Item 6; Re Edward Parkyn Post #48, Bulletin 465, Item 3; Re Lake Hartung Club Inc., Bulletin 472, Item 8. Hence, I shall dismiss charges (1) and (2).

As to charges (3) and (4): Investigators of the Department of Alcoholic Beverage Control, who were not members or guests of any member of the club, entered the licensed premises on March 17, 1942 and were served whiskey by Charles Soriero. No inquiry was made by him as to whether they were club members. I have previously stated that club licensees must scrupulously obey the law in regard to sales to non-members, and that I would impose severe penalties for violations of this character by club licensees. See Re Eighth Ward Progressive Club, Bulletin 514, Item 4. Defendant has no previous record, and hence I shall impose the minimum penalty and suspend the club license for a period of fifteen days, with five days remitted for the guilty plea, leaving a net suspension of ten days.

Accordingly, it is, on this 19th day of January, 1943,

ORDERED, that Club License CB -15, issued by the Board of Commissioners of the City of Trenton to Meadowbrook Social Club, for premises 725 North Clinton Avenue, Trenton, be and the same is hereby suspended for ten (10) days, commencing at 2:00 A. M. January 22, 1943, and terminating at 2:00 A. M. February 1, 1943.

ALFRED E. DRISCOLL
Commissioner.

- 5. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWERS IN APPLICATION FOR CLUB LICENSE - SUPPRESSION OF MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - LICENSE REVOKED.

In the Matter of Disciplinary)
Proceedings against)
SOUTH SPRUCE BOCCE CLUB)
331 Spruce Street)
Camden, N. J.,)
Holder of Club License CB-40)
issued by the Municipal Board)
of Alcoholic Beverage Control)
of the City of Camden.)

CONCLUSIONS
AND ORDER

Richard Gossweiler, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant, a club licensee, has failed to present any defense to the following charges preferred against it:

"1. In your application, filed with the Municipal Board of Alcoholic Beverage Control of the City of Camden and upon which you obtained your current club license, you falsely stated 'Yes' in answer to Question 19, which asks: 'Has the club been in active operation in the State of New Jersey for at least three (3) years immediately prior to this application?', whereas in truth and fact your club had not been in active operation in New Jersey for said period; such false statement being in violation of R. S. 33:1-25.

"2. In your aforesaid application you falsely stated 'No' in answer to Question 29, 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 Rocco Benevento was the real and beneficial owner of said license and the business conducted thereunder; such false statement being in violation of R. S. 33:1-25.

"3. From July 1, 1942, and theretofore, and until the present time, you knowingly aided and abetted Rocco Benevento to exercise, contrary to R. S. 33:1-26, the rights and privileges of your club license in the City of Camden, thereby yourself violating R. S. 33:1-52."

These charges are based upon a signed statement made by Rocco Benevento, which establishes that, while he is nominally the President of the club licensee, actually there have been no club meetings or activities since April 1942. He states that he kept all the receipts derived from the sale of alcoholic and other beverages, paid all expenses, and treated the business entirely as his own.

It is clear that licensee was not a bona fide club, but was a dummy organization, and that Benevento actually conducted the licensed business solely for his profit and benefit under cloak of the club license. The license will be revoked.

Accordingly, it is, on this 19th day of January, 1943,

ORDERED, that Club License CB-40, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to South Spruce Bocce Club for premises 331 Spruce Street, Camden, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN PROOF, SOLIDS AND COLORING - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

JOSEPH A. LANGLEY)
508 Ocean Avenue)
Jersey City, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-422, issued by the Board of Commissioners of the City of Jersey City.)

John J. Carlin, Esc., Attorney for Defendant-Licensee:
Abraham Merin, Esc., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee pleaded non vult to a charge alleging that he possessed a 4/5 quart bottle of "Four Roses Rye A Blend of Straight Whiskies", which contained an alcoholic beverage which was not genuine as labeled, in violation of R. S. 33:1-50.

On September 16, 1942, the bottle in question was seized by Federal agents. Upon analysis, it was found to be 12.4 under proof and to contain almost three times the normal solid content. In addition, although a genuine sample of the liquor contains only natural coloring, the tested bottle contained 30% artificial coloring, proving definitely that the contents had been refilled with other liquor.

The fact that the bottle may have been tampered with by the bartender does not relieve the defendant of responsibility.
Re Kurian, Bulletin 517, Item 2.

A ten-day penalty will be imposed. Re Klunck, Bulletin 547, Item 1.

Accordingly, it is, on this 20th day of January, 1943,

ORDERED, that Plenary Retail Consumption License C-422, issued by the Board of Commissioners of the City of Jersey City to Joseph A. Langley for premises 508 Ocean Avenue, Jersey City, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A. M. on January 25, 1943 and terminating at 2:00 A. M. on February 4, 1943.

ALFRED E. DRISCOLL
Commissioner.

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN COLOR CONTENT - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

ROSE FACHER)
328 Henderson Street)
Jersey City, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-474, issued by the Board of Commissioners of the City of Jersey City.)
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Morris Schnitzer, Esq., Attorney for Defendant-Licensee.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee pleaded non vult to a charge alleging that she possessed a 4/5 quart bottle of "Four Roses Rye A Blend of Straight Whiskies", a quart bottle of "Capstairs White Seal Blended Whiskey", and a quart bottle of "Wilson 'That's All' Blended Whiskey," all of which contained alcoholic beverages which were not genuine as labeled, in violation of R. S. 33:1-50.

From a report submitted by Federal agents, it appears that they tested 78 bottles of liquor at the defendant's tavern and found 75 to be satisfactory. The three bottles seized by them were found, upon analysis, to differ radically from authentic samples in color content, as a result of which the Federal chemist concluded that each was a "refill."

The defendant suggested as possible reasons for the variances that customers at the bar had tampered with the bottles, or that a porter had refilled them to conceal the fact of his having consumed some of the liquor. Despite lack of personal participation in the violation, a licensee must be held to strict accountability for any "refills" found in his liquor stock. Re Kurian, Bulletin 517, Item 2.

The license will be suspended for ten days. Re Klunck, Bulletin 547, Item 1.

Accordingly, it is, on this 20th day of January, 1943,

ORDERED, that Plenary Retail Consumption License C-474, issued by the Board of Commissioners of the City of Jersey City to Rose Facher for premises 328 Henderson Street, Jersey City, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A. M. on January 25, 1943, and terminating at 2:00 A. M. on February 4, 1943.

ALFRED E. DRISCOLL
Commissioner.

8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN PROOF AND COLORING - 10 DAYS' SUSPENSION - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA - TOTAL: 15 DAYS.

In the Matter of Disciplinary Proceedings against)

FRANK MANZIANO & HUGH O'BRIEN)
304 Communipaw Avenue)
Jersey City, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-199, issued by the Board of Commissioners of the City of Jersey City.)
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Harry R. Rey, Esq., Attorney for Defendant-Licensees.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensees pleaded non vult to charges alleging that (1) they possessed two 4/5 quart bottles of "Canadian Club Blended Canadian Whisky", both of which contained alcoholic beverages which were not genuine as labeled, in violation of R. S. 33:1-50, and (2) and (3) they sold alcoholic beverages, and permitted patrons on their licensed premises during prohibited hours, in violation of local regulation.

As to (1): On August 31, 1942 Federal agents tested 47 bottles of liquor at the defendants' tavern and seized two bottles of "Canadian Club Blended Canadian Whisky", which did not test as labeled. Upon chemical analysis they were found to vary substantially from an authentic sample in proof and coloring matter. As a result of the analyses the chemist concluded that both bottles had been refilled with other liquor.

The defendants deny any tampering on their part with either bottle and explain that they had been taken over from their predecessor in interest. No valid defense is disclosed by their disclaimer. As was said in Re Moritko, Bulletin 490, Item 4:

"....the defendant.....cannot avoid responsibility or penalty even if, as he suggests, the bottle was merely a 'carry-over' from his predecessor. This Department has been willing, on request, to check a tavern's open liquor stock for any licensee who is buying such tavern. Where such a purchaser elects to take over the open stock and fails to use this or other adequate means to test and weed out any possible illicit liquor, he must be viewed as necessarily assuming the risk if illicit liquor is subsequently found on his premises."

I shall suspend the license for ten days for this violation. Re Klunck, Bulletin 547, Item 1.

As to (2) and (3): On October 31, 1942 two ABC agents visited the licensed premises at 2:40 A. M., or forty minutes after the closing hour fixed by local regulation. One customer was leaving at

the time and another was drinking at the bar. Both agents were served alcoholic beverages by the bartender.

Since this violation occurred before my pronouncement of November 27, 1942 (Re Disbrow, Bulletin 540, Item 3), in which I recommended a fifteen-day penalty for "chiseling" hours violations, I shall impose a penalty of ten days, with five days remitted for the guilty plea, or a net of five days. Re Morgan, Bulletin 542, Item 10; Re Fiderko, Bulletin 545, Item 8.

The total suspension herein is thus fifteen (15) days.

Accordingly, it is, on this 20th day of January, 1943,

ORDERED, that Plenary Retail Consumption License C-199, issued by the Board of Commissioners of the City of Jersey City to Frank Manziano & Hugh O'Brien for premises 304 Communipaw Avenue, Jersey City, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 A.M. January 25, 1943, and terminating at 2:00 A.M. February 9, 1943.

ALFRED E. DRISCOLL
Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS - HINDERING INVESTIGATION - PREVIOUS RECORD - 30 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

BENJAMIN A. NIEWINSKI,
1898 River Avenue)
Camden, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-150, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)
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Benjamin A. Niewinski, Pro Se.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee pleaded not guilty to charges alleging that (1) on Sunday, June 28, 1942, he sold alcoholic beverages after 2:00 A.M., in violation of local ordinance, and (2) on that day he hindered and failed to facilitate an investigation of his licensed premises, in violation of R. S. 33:1-35.

On Sunday morning, June 28, 1942, shortly before noon, two ABC agents observed three men enter the defendant's tavern, each of them gaining admittance after knocking on the side door. They then noticed an automobile stop opposite the side door and a man alight, knock on the door and enter. Shortly thereafter, he came out with a large carton which he placed in the car. The agents then identified themselves to the driver of the automobile and seized the carton, which contained twelve ice cold quart bottles of beer.

When the agents attempted to enter the premises, they found the door locked. They were forced to wait about five minutes before they were admitted, the licensee remarking as he opened the door, "...you don't have to show them (the agents' credentials) to me; I know who you are." When the agents were finally permitted to enter, they found that the three men they had observed going into the tavern via the side door were no longer on the premises. The licensee was abusive in his treatment of the agents, both in manner and language. He motioned the driver of the automobile, who had accompanied the agents into the tavern, not to give them any information and refused to discuss the incident with them, stating that he wasn't a "damn fool" and that the agents could "tell it to the Judge." He later refused to allow one of the agents, who had stepped outside, to re-enter, until finally prevailed upon to do so by the other agent. One of the agents, who has been employed by this Department for over seven years and has made upwards of one thousand investigations, testified that this licensee is "one of the most uncooperative licensees that I have had contact with in my investigations."

The licensee, although denying guilt, admitted that he "flew off the handle" and was "very harsh." He explained that he was recuperating from an illness and was nervous and upset on the morning in question. This fact, if it be true, presents no excuse for his treatment of the agents of the Department of Alcoholic Beverage Control. In Re Moose, Bulletin 520, Item 3, I stated:

"Sound law enforcement requires that licensees cooperate with, rather than hinder, the activities of the control agents. Where this cooperation is lacking substantially increased penalties may be expected."

I find the licensee guilty as charged. For the hours violation, I shall impose a penalty of ten days since it occurred before my recommendation of November 27, 1942 (Re Disbrow, Bulletin 540, Item 3) that such "chiseling" violations receive a penalty of at least fifteen days. Re Morgan, Bulletin 542, Item 10; Re Fiderko, Bulletin 545, Item 8.

On the second charge, the license will be suspended for fifteen days. Cf. Re Moose, *supra*.

In addition, the previous record of this licensee shows that his license was suspended by the local issuing authority in December 1941 for possession of off-proof liquor. Because of such record, the penalty herein will be increased by five days, thus making a total suspension of thirty days.

Accordingly, it is, on this 20th day of January, 1943,

ORDERED, that Plenary Retail Consumption License C-150, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Benjamin A. Niewinski for premises 1898 River Avenue, Camden, be and the same is hereby suspended for a period of thirty (30) days, commencing at 2:00 A.M. on January 25, 1943, and terminating at 2:00 A.M. on February 24, 1943.

ALFRED E. DRISCOLL
Commissioner.

10. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES IN VIOLATION OF RULE 4 OF STATE REGULATIONS NO. 22 - PREVIOUS RECORD - 30 DAYS' SUSPENSION - SALE OF ALCOHOLIC BEVERAGES TO MINORS - 10 DAYS' SUSPENSION - TOTAL: 40 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

ANGELINE McLEAN,
T/a McLEAN'S 20TH CENTURY
LOG CABIN
6524 Crescent Boulevard
Pennsauken Township
P. O. Merchantville, N. J.,

CONCLUSIONS
AND ORDER

Holder of plenary Retail Consumption License C-22, issued by the Township Committee of the Township of Pennsauken.

Benjamin J. Dzick, Esq., Attorney for Defendant-Licensee.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads guilty to the following charges:

"1. On or about July 25, 1942 you served to purchasers alcoholic beverages other than ordered, in violation of Rule 4 of State Regulations No. 22.

"2. On or about the date aforesaid you sold alcoholic beverages to June --- and Vera Kathleen ---, minors, in violation of R. S. 33:1-77.

"3. On or about the date aforesaid you sold, served and delivered, and allowed and permitted and suffered the service and delivery of alcoholic beverages to June --- and Vera Kathleen ---, persons under the age of twenty-one (21), and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon the licensed premises, in violation of Rule 1 of State Regulations No. 20."

As to charge (1): Our records disclose that three investigators of the Department of Alcoholic Beverage Control visited defendant's premises on July 25, 1942. One investigator sat at a table and the other two investigators sat at the bar, where they were able to observe the actions of the bartender. The investigator who was seated at the table ordered a drink of "Canadian Club" whiskey and shortly thereafter ordered a second drink of the same item. The waitress then handed to this investigator a check on which he was charged for two drinks of "Canadian Club." However, the two investigators who were seated at the bar observed that in both instances the bartender had poured the drinks from a bottle labeled "Signet" whiskey, which is substantially cheaper in price. Customers are entitled to receive the liquor which they order. Re Belza, Bulletin 548, Item 3. This is not defendant's first violation of this character. In June 1940 the local issuing authority suspended her license for fifteen days after she had pleaded guilty to a charge which alleged that her bartender had refilled a "Calvert Reserve"

bottle with Schenley's "Red Label" whiskey. Under all the circumstances, I shall suspend her license for thirty days because of the violation alleged in charge (1).

As to charges (2) and (3): While the investigators were on the premises they saw June --- (who was born December 4, 1921) purchase and consume a "Tom Collins." They also saw Vera Kathleen --- (who was born September 3, 1922) consume a glass of beer. There appear to be no aggravating circumstances and hence I shall impose the minimum suspension of ten days for sales to minors. Hence, the license will be suspended for an additional period of ten days because of the violations set forth in charges (2) and (3). Five days will be remitted for the guilty plea, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 25th day of January, 1943,

ORDERED, that Plenary Retail Consumption License C-22, issued by the Township Committee of the Township of Pennsauken to Angeline McLean, t/a McLean's 20th Century Log Cabin, for premises 6524 Crescent Boulevard, Pennsauken Township, be and the same is hereby suspended for thirty-five (35) days, commencing at 3:00 A. M. January 28, 1943, and terminating at 3:00 A. M. March 4, 1943.

Alfred E. Driscoll
Commissioner.

CHECKED BY No. 1

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