

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

BULLETIN 694

FEBRUARY 14, 1946

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

BULLETIN 694

FEBRUARY 14, 1946

1. APPELLATE DECISIONS - CARUSO v. JERSEY CITY

LOUIS CARUSO and PAUL CARUSO, )

Appellants, )

ON APPEAL

CONCLUSIONS AND ORDER

BOARD OF COMMISSIONERS OF )  
THE CITY OF JERSEY CITY, )

Respondent. )

Morris M. Schnitzer, Esq., and Samuel Moskowitz, Esq., Attorneys  
for Appellants.

John J. Meehan, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellants appeal from the action of the Board of Commissioners of the City of Jersey City revoking their plenary retail distribution license after they had been found guilty of selling alcoholic beverages to a minor in violation of R.S. 33:1-77.

On August 20, 1945, an employee of the appellants sold a bottle of wine to Kenneth W---, who was then nineteen years of age. Louis Caruso, one of the appellants, on a previous occasion in May, 1945, sold alcoholic beverages to the same minor after the latter had represented in writing, by a signed statement, that he was twenty-one years of age. Kenneth is a veteran of World War II, married, the father of a child, and apparently has been acquainted with the Carusos for three years.

Louis Colacurcio, the employee who sold the alcoholic beverages to Kenneth in August, testified that it was his opinion that the latter was twenty-one years of age and that at the time he made the sale he was aware that Kenneth had previously signed a written statement that he was of age. The written statement was not offered in evidence at the hearing held by respondent's Director of Public Safety. It was reported mislaid.

On the report and "recommendation" of the Director of Public Safety, respondent revoked appellants' license.\*

On appeal the attack on the procedure followed by the respondent was abandoned leaving as the only meritorious issue the applicability of the defense outlined in R. S. 33:1-77 to the charge preferred by the respondent.

The appeal before the Commissioner was "heard de novo". The written statement alleged to have been signed by Kenneth was offered by the appellants and admitted in evidence. Louis Caruso and Kenneth both testified that the statement had, in fact, been signed on May 11, 1945. One of the police officers who investigated the sale on August 20th testified that the appellant, Louis Caruso, told him that he had obtained a signed statement from Kenneth that he was

\* See footnote at conclusion of this opinion.

twenty-one years of age. I am satisfied that the written statement was in fact signed by Kenneth at the time and in the manner described in the testimony. Thus the evidence before the Commissioner varies from that offered before the respondent.

The Hearer who presided when this appeal was heard reports that Kenneth could easily be taken to be over twenty-one years of age. The young man "sports" a mustache, thereby adding to the illusion of an age more than twenty-one years.

R. S. 33:1-77 provides that anyone who sells any alcoholic beverage to a minor "shall be guilty of a misdemeanor; provided, however, that the establishment of all of the following facts by a person making any such sale shall constitute a defense to any prosecution therefor; (a) that the minor falsely represented in writing that he or she was twenty-one (21) years of age or over, and (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one (21) years of age or over, and (c) that the sale was made in good faith relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one (21) years of age or over".

R. S. 33:1-31 authorizes a municipal issuing authority, after five days notice to the licensee and after a public hearing (see R.S. 33:1-24) to "suspend or revoke" any license issued by it for the causes enumerated therein including: "a violation of any of the provisions of" the Alcoholic Beverage Law; "\*\*\* any violation of rules and regulations".

From the evidence in the record I find that the minor, Kenneth W---, falsely represented in writing that he was over twenty-one years of age, that his appearance was such that an ordinary prudent person would believe him to be twenty-one years of age or over, and that the sales in May and August were made in good faith relying upon the written representation and appearance. Thus, the procedure and defense prescribed by the statute appears to have been followed and established by the appellants.

The question remains whether or not the defense provided by Section 77 is available to a licensee in disciplinary proceedings. I believe that it is.

I am satisfied that it was the intent of the Legislature that where a licensee has followed the procedure outlined in Section 77 and met the requirements, the defense thus established should be just as effective in disciplinary proceedings as it is in criminal proceedings.

The appellants having carried the burden of proof, I have no alternative other than to reverse the action of the respondent Board of Commissioners of Jersey City.

A number of witnesses testified that the corner where appellants' store is located has been a troublesome one. It may be that respondent, in the neighborhood in question, is confronted by a police problem requiring attention and appropriate action. The testimony with respect to this condition, however, was not relevant to the issue herein and, hence, may not be properly considered in these proceedings.

Accordingly, it is, on this 6th day of February, 1946,

ORDERED that the action of respondent in revoking Plenary Retail Distribution License D-124, issued to the appellants for the year 1945-46, by the Board of Commissioners of the City of Jersey City, be and the same is hereby reversed.

ALFRED E. DRISCOLL  
Commissioner

Footnote:

R. S. 33:1-24 provides that it "shall be the duty" of the municipal issuing authority "to conduct public hearings on \* \* \*

revocations". The word "revocation" includes all disciplinary proceedings irrespective of whether they result in a suspension of the license for a period of time or an outright revocation. A municipal issuing authority may, pursuant to R. S. 33:1-31 "suspend or revoke any license issued by it" provided it has first given the licensee five days notice of the charges preferred against him and afforded the licensee "a reasonable opportunity to be heard" at a public hearing. (emphasis added)

When a municipal issuing authority conducts disciplinary proceedings, it is performing a quasi-judicial function. With respect to the propriety of delegating to a single member of the issuing authority power to conduct disciplinary proceedings, to "report" findings, and to "recommend" a final decision, compare Morgan v. United States, 238 U.S. 468, 482; 80 L. Ed. 1288, 1296; and Redcay v. State Board of Education, 128 N.J.L. 281, 284.

A municipal issuing authority except in those municipalities where there is a municipal board of alcoholic beverage control may not delegate its quasi-judicial function of adjudicating issues coming before it in disciplinary proceedings or on application for a license or a transfer of the same.

While the conduct of a "public hearing" may be delegated as in the case of administrative duties generally, the adjudication of the issues raised by an application for a license or the transfer of the same or in disciplinary proceedings must be by the issuing authority after the members thereof have considered the entire record including, of course, the testimony presented at the hearing.

Where an issuing authority does delegate to a single individual the task of holding a hearing, provision must be made for an accurate, verified stenographic record of the proceedings. The defendant is entitled to be heard by the issuing authority in the event it is alleged that evidence has been erroneously omitted or rejected. The issuing authority is not bound by the findings of the hearer or by his recommendation. It must reach its own independent conclusion.

In Caruso v. Jersey City, just decided on other grounds, it appears from the respondent's resolution that the municipal issuing authority, without any independent examination by its members of the testimony taken before the Director of Public Safety, merely "concurred" in his "recommendation". The respondent erred when it followed this procedure. The ground of appeal based upon this error was, however, abandoned by appellants.

There is a sharp distinction between the conduct of a hearing and judicial action based upon the testimony presented at the hearing. The administrative task may be delegated, the judicial duty may not be delegated. The procedure in the above appeal deprived the appellants of an opportunity to have the charges against them adjudicated after an exercise of independent judgment by the individual members of the municipal issuing authority.

2. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS

In the Matter of Disciplinary Proceedings against )

ADA R. BENSEL, )  
11 East Burlington Street, )  
Bordentown, New Jersey, )

Holder of Plenary Retail Consumption License C-5, issued by the City Commission of the City of Bordentown. )  
----- )

CONCLUSIONS AND ORDER

Harold T. Parker, Esq., Attorney for Defendant-licensee.  
Harry Castelbaum, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant has pleaded non vult to a charge that she possessed a 4/5 quart bottle labeled "King William IV Blended Scotch Whisky", which contained an alcoholic beverage not genuine as labeled, in violation of R. S. 33:1-50.

On December 7, 1945, an ABC agent seized on defendant's licensed premises the bottle above described. Subsequent analysis by the Department's chemist confirmed the fact that the whisky in the seized bottle was not genuine as labeled.

Defendant and her only employee, her bartender-manager who is also her husband, deny that they tampered with the contents of the seized bottle. It is claimed that the bottle, then open, was taken over by the defendant when she assumed control of the licensed business in July, 1941. Prior to July 1, 1941, the business had been operated by defendant's sister as executrix of the estate of the mother of the two sisters. Cf. Rittenger v. Bordentown and Bensel, Bulletin 547, Item 10. Defendant's husband claims that he has been associated with the tavern since 1938; that the "King William" bottle was open prior to his wife's assumption of the business; that the demand for Scotch Whisky at defendant's tavern was and is very limited. A thorough examination of defendant's records shows that no "King William" was purchased by her or her predecessor since November 9, 1939.

However, a licensee is strictly responsible for any "refills" found in her stock of liquor. Re Kurian, Bulletin 517, Item 2. After careful consideration of all the elements in this case, and in the absence of any adjudicated record, I shall, without departing from the principles generally outlined in Re Rudolph, Bulletin 680, Item 1, suspend the license for a period of ten days. Re Sierra, Bulletin 692, Item 5.

Accordingly, it is, on this 5th day of February, 1946,

ORDERED that Plenary Retail Consumption License C-5, issued by the City Commission of the City of Bordentown to Ada R. Bensel, for premises 11 East Burlington Street, Bordentown, be and the same is hereby suspended for a period of ten (10) days, commencing at 12:00 o'clock midnight February 11, 1945, and terminating at 12:00 o'clock midnight February 21, 1946.

ALFRED E. DRISCOLL  
Commissioner

3. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary Proceedings against )

FLORENCE R. M. KAUDER )  
t/a Somerville Inn )  
Route 29 & North Bridge St. )  
Somerville, New Jersey )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-13, issued by the Borough Council of the Borough of Somerville. )  
----- )

Leon Gerofsky, 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 that she possessed a pint bottle labeled "Old Taylor Kentucky Straight Bourbon Whiskey" and a 4/5 quart bottle labeled "Old Blended Scotch Whisky Johnnie Walker Black Label", both of which bottles contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

On December 7, 1945, an investigator of the Department of Alcoholic Beverage Control seized the liquor in question after preliminary tests indicated that the contents thereof were not genuine as labeled. Subsequent analysis by the Department chemist disclosed that the bottles had been definitely refilled.

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

Defendant, Florence Kauder, was secretary of the Somerville Inn, Inc., a corporation which formerly held the license for the premises in question. The corporation had its license suspended by the local issuing authority for "hours" violations on two occasions; three days, effective April 16, 1941; and seven days, effective August 17, 1942. At the time when the latter suspension was imposed, Mrs. Kauder was actively engaged in the operation of the business. In the absence of any prior record, I would suspend defendant's license for fifteen days. Re Nurse, Bulletin 680, Item 7. Under all the circumstances, I shall suspend defendant's license for a period of twenty days.

Accordingly, it is, on this 5th day of February, 1946,

ORDERED that Plenary Retail Consumption License C-13, issued by the Borough Council of the Borough of Somerville to Florence R. M. Kauder, t/a Somerville Inn, for premises on Route 29 & North Bridge Street, Somerville, be and the same is hereby suspended for a period of twenty (20) days, commencing at 1:00 a. m., February 13, 1946, and terminating at 1:00 a. m., March 5, 1946.

ALFRED E. DRISCOLL  
Commissioner

4. SEIZURE - FORFEITURE PROCEEDINGS - MOTOR VEHICLES USED TO TRANSPORT STOLEN LIQUOR IN VIOLATION OF ALCOHOLIC BEVERAGE LAW ORDERED FORFEITED - FINANCE COMPANY FOUND TO HAVE ACTED IN GOOD FAITH, CLAIM FOR THE AMOUNT OF ITS LIEN ALLOWED - STOLEN LIQUOR RESTORED TO OWNER.

In the Matter of the Seizure ) Case No. 6882  
 on September 6, 1945, of 50 )  
 bottles of alcoholic beverages,) On Hearing  
 a Chevrolet sedan, Pontiac )  
 sedan and Oldsmobile sedan, in ) CONCLUSIONS AND ORDER  
 the City of Newark, County of )  
 Essex and State of New Jersey. )

Jerome Litvak, Esq., Attorney for Mutual Discount Co.  
 Frank E. Harlow, Jr., Pro Se.  
 Stephen V. Wicks, Pro Se.  
 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 50 bottles of alcoholic beverages and three motor vehicles seized on September 6, 1945, in Newark, New Jersey, constitute unlawful property and should be forfeited.

This seizure is the outgrowth of the theft of alcoholic beverages in the summer of 1945 from the licensed premises of Mayfair Farms, Inc., located in West Orange, New Jersey.

The major figures in the case are Stephen V. Wicks, who was employed by a milk company and his brother-in-law, Louis Erdman, who was employed as a bartender.

ABC agents, acting on information that alcoholic beverages had been filched from the Mayfair premises, and illegally transported, questioned Danny Sullivan, manager of the Mayfair Farms, Wicks and Erdman, all of whom were suspected of the thefts.

From these men they learned that in July 1945 Danny Sullivan asked Wicks whether he could dispose of some scotch whisky; that Wicks in turn spoke with his brother-in-law, who as a bartender, was more familiar with such matters and they accepted Sullivan's proposition.

According to Sullivan, Erdman came to Mayfair Farms in his Pontiac sedan on six or seven occasions during the period between July 1945 and September 1, 1945. Each time, he received two cases of alcoholic beverages from Sullivan, placed them in his car and drove away. On three other separate occasions during this period, Sullivan gave Frank Harlow two cases of alcoholic beverages. Harlow transported these beverages in his Chevrolet sedan from Mayfair Farms and turned them over to Wicks.

On September 3, 1945, Sullivan gave Harlow about four cases of alcoholic beverages and Harlow transported them in his car from Mayfair Farms, and delivered such beverages to a Union Township resident. This person, apparently accepted the beverages from Sullivan in payment of an indebtedness and appears to be innocent of wrongdoing. Neither Erdman nor Wicks were involved in this transaction. All of these alcoholic beverages were allegedly taken from Mayfair Farms without the knowledge or consent of the owners.

Erdman told the ABC agents of two trips which he made to the Mayfair Farms. He says that on each occasion he obtained three cases (36 - 4/5 quarts) of scotch whisky and transported them to Newark in his Pontiac sedan. On another occasion he met Wicks on Orange Street, Newark, near the latter's place of employment, and Wicks transferred two cases of scotch whisky from his Oldsmobile sedan to Erdman's car. Erdman told the ABC agents that he sold the whiskey which he had obtained at the Mayfair Farms to an unidentified man whom he met at a Newark tavern, and that he sold the whisky which he obtained from Wicks to an officer of a corporate retail liquor licensee. Erdman later changed his story and said that he actually sold alcoholic beverages on five occasions, the first to the unknown man and the four other sales to the aforementioned officer of the corporation.

Wicks admitted to the ABC agents that he met Harlow on three occasions, and on each occasion transferred two cases of alcoholic beverages from Harlow's car to his car. He says that he met Harlow on each occasion near the intersection of Springdale Avenue and Grove Street, East Orange. (Harlow's story is that he met Wicks on one occasion on Hill Street, Newark.) The story Wicks first gave to the agents was that he transferred these six cases of alcoholic beverages from his Oldsmobile sedan to Erdman's car and that Erdman sold these beverages. Wicks later changed his story and said that he transported the six cases of alcoholic beverages in his car and sold them to a Newark "package store" licensee. Of the proceeds of these sales of alcoholic beverages Sullivan received \$50.00 a case and the balance was divided between Erdman and Wicks.

Neither the Chevrolet, Oldsmobile, nor Pontiac sedans were licensed by the State Department of Alcoholic Beverage Control to transport alcoholic beverages. It is unlawful to transport alcoholic beverages in any vehicle which is not licensed for that purpose (except a limited quantity intended for personal consumption). R.S. 33:1-2. A vehicle which is used to transport alcoholic beverages illegally constitutes unlawful property and is subject to seizure and forfeiture. R. S. 33:1-1(y), R. S. 33:1-66.

On September 6, 1945, after the ABC agents had obtained these stories, they seized the three aforementioned motor vehicles, 43 bottles of alcoholic beverages which Harlow had delivered to the Union Township resident and seven bottles of alcoholic beverages which Wicks identified at the package store and claimed were part of the alcoholic beverages he sold there.

Pending seizure hearing in the case, the Chevrolet sedan was returned to Frank E. Harlow, Jr., upon payment to the State Commissioner of Alcoholic Beverage Control of the sum of \$125.00 under protest, pursuant to R.S. 33:1-66, the appraised retail value of such car. Harlow has stipulated that the Commissioner shall determine, in this proceeding, whether this money should be returned to him.

When the matter came on for hearing, pursuant to R.S. 33:1-66, Frank E. Harlow, Jr., appeared and sought return of said sum of \$125.00; Stephen V. Wicks appeared and sought return of his Oldsmobile sedan; and an appearance was entered for Mutual Discount Co., which sought recognition of its alleged lien claim upon Erdman's Pontiac sedan.

Under the provisions of R. S. 33:1-66(e), I have discretionary authority to return property subject to forfeiture to a person, who

has established to my satisfaction, that he acted in good faith and unknowingly violated the law. I, likewise, have the discretionary authority, under R.S. 33:1-66(f), to recognize a bona fide and valid lien upon forfeited property, if such lien claimant establishes to my satisfaction that he has acted in good faith and had no knowledge of the unlawful use to which the property was put or of such facts as would have led a person of ordinary prudence to discover such use.

Wicks seeks to claim that he thought that the alcoholic beverages were Sullivan's personal property and not stolen from the Mayfair Farms; that he was under the impression that it was lawful to transport not more than two cases of alcoholic beverages in an unlicensed vehicle; and hence, that this establishes his innocence of wrongdoing. Actually, no alcoholic beverages intended for sale may be transported in an unlicensed vehicle.

I am not convinced that Wicks was innocent in the matter. It is more reasonable to conclude that Wicks knew or at least suspected that it was not Sullivan's personal liquor and that it was unlawful for him to use his car to transport any of such alcoholic beverages.

Aside from this, there is another equally serious aspect of the case. Neither Wicks nor Erdman held any license authorizing either of them to sell alcoholic beverages. Wicks definitely knew or should have known that it was unlawful for him or Erdman to sell alcoholic beverages, whether legitimate in origin or stolen. All that Wicks has to say on this subject is that he tried to think he was doing right.

This is indeed a weak explanation, inasmuch as Wicks was a special officer employed part-time by a hotel which holds a liquor license and his brother-in-law was a bartender, presumably familiar with the liquor laws. The "street-corner" meetings between Wicks and Harlow and the transfer of alcoholic beverages from car to car and the opportunity that Wicks had to ascertain whether he was doing right by merely asking his brother-in-law or the licensee where he was employed, indicates that he knew full-well that it was unlawful for him or Erdman to sell alcoholic beverages.

I am satisfied that Wicks participated in the illegal enterprise with his eyes wide open. A person who knowingly participates in an unlawful transaction, irrespective of whether or not it involves alcoholic beverages, cannot be characterized as having acted in good faith and unknowingly violated the law. Wicks' request for return of the Oldsmobile sedan, is therefore, denied.

Frank E. Harlow, Jr., stands on a somewhat different position than Wicks. He is apparently the "good samaritan". He is a young man who was flattered that Danny Sullivan, manager of the Mayfair Farms and a minor celebrity, regarded him as a friend. His story is that he was currying favor with Sullivan by complying with his requests to transport the alcoholic beverages on the occasions in question, unaware that he was violating the laws governing transportation of alcoholic beverages.

I can understand the reasons which prompted Harlow to act as he did and sympathize with him in his plight. Nevertheless, even friendship cannot excuse him for closing his eyes to the fact that he was participating in an unlawful enterprise.

Assuming that he had no reason to suspect that the alcoholic beverages he was transporting were, in fact, stolen from the Mayfair Farms, it is difficult to believe that he or any reasonably prudent person could meet Wicks on three separate occasions at "street corners" and transfer alcoholic beverages from car to car without suspecting that there was something "shady" in the transaction. He

seeks to claim that these meetings on the street were for the purpose of saving gas during gas-rationing days. It is significant that the last occasion occurred on August 25, 1945, when gasoline was no longer rationed.

The unlawful transportation of stolen alcoholic beverages was also involved in Seizure Case No. 6796, Bulletin 677, Item 11.

I there said:

"The transportation of stolen alcoholic beverages constitutes a serious violation of the law."

X X X X

"It is the unlawful activity and the illegal use of the car that is the material consideration -- it is that which permits the seizure and supports the forfeiture. The guilt or innocence of the owner, under our law, is important only in so far as it demonstrates the presence or absence of good faith or that the owner has 'unknowingly violated' the Alcoholic Beverage Law."

Even if Harlow did not know that his car was subject to forfeiture, by reason of its use for the unlawful transportation of the alcoholic beverages, that, in itself, is not sufficient to establish that he acted in good faith and unknowingly violated the law. It must also appear as an essential element of good faith, that aside from the unlawful transportation, he was not otherwise engaged in an unlawful enterprise. See Seizure Case No. 6796, supra.

It is clear that Harlow, when transporting the stolen alcoholic beverages from the Mayfair Farms and transferring them to Wicks in the street, knew, or should have known, that he was engaged in an unlawful enterprise. Under these circumstances, there is no legal basis upon which I may grant Harlow's request and I am therefore compelled to deny his application for return of the \$125.00 which he deposited under protest.

The lien claim of the finance company upon Erdman's car remains for consideration.

Marcus Gross, one of the partners trading as Mutual Discount Co., presented proof that on May 23, 1945, Louis Erdman and his wife Dorothy Erdman were indebted to the finance company in the sum of \$311.20 secured by a conditional sales contract covering the motor vehicle; and that the amount presently due from Mr. and Mrs. Erdman is \$608.40.

Mr. Gross testified that before doing business with Mr. & Mrs. Erdman, his finance company obtained a credit statement from them and checked the information therein contained, including the fact that Mr. Erdman had been employed by an industrial concern for ten years and his wife had been employed by a reputable company from September 1943 to the date of the investigation. The finance company also sought information from a merchants' protective bureau. The latter failed to disclose any information detrimental to Mr. & Mrs. Erdman's character or financial responsibility. The finance company thereupon accepted their application for a loan.

Mr. Gross further testified that his finance company did not know or have any reason to suspect that Erdman was using the motor vehicle to transport alcoholic beverages in violation of the law.

I am satisfied from the evidence that the Mutual Discount Co. made an adequate investigation of Erdman's character and background before dealing with him and hence will recognize its claim to the extent of \$608.40.

It appears that the appraised value of the motor vehicle exceeds the amount of the lien, and the Director of Purchases and Property of the Department of Taxation and Finance advises that it is interested in retaining the vehicle for the use of the State. Hence, an Order will be entered retaining the Pontiac sedan for the use of the State, conditioned upon the payment to Mutual Discount Co. of the lien claim of \$608.40.

The 43 bottles of alcoholic beverages which Harlow delivered in Union Township, and seized by the agents, are the property of the Mayfair Farms, and will be returned to it.

The seven bottles of alcoholic beverages seized from the package store, with the licensee's consent, upon Wicks' uncorroborated and contradictory accusation, will be temporarily retained as evidence pending a careful review as to which, if any, licensee did in fact purchase the stolen liquor. Retail licensees may not buy stolen liquor nor, for that matter, buy any liquor from other than an authorized source. Rule 15 of State Regulations No. 20.

Accordingly, it is DETERMINED and ORDERED that the Pontiac sedan referred to in Schedule "A" annexed hereto, constitutes unlawful property and that the same be retained for the use of the State of New Jersey, conditioned upon payment to the Mutual Discount Co. of its lien claim in the amount of \$608.40; and it is further

DETERMINED and ORDERED that the 43 bottles of alcoholic beverages referred to in the aforesaid Schedule "A", be returned to the Mayfair Farms, Inc.; and it is further

DETERMINED and ORDERED that the Chevrolet sedan, referred to in the aforesaid Schedule "A", constitutes unlawful property and that the sum of \$125.00 representing the retail value of such car, paid under protest to the State Commissioner of Alcoholic Beverage Control by Frank E. Harlow, Jr., be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66 and accounted for by me in accordance with law; and it is further

DETERMINED and ORDERED that the Oldsmobile sedan referred to in Schedule "A" aforesaid 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, as the Commissioner may hereafter direct.

ALFRED E. DRISCOLL  
Commissioner

Dated: February 5, 1946.

#### SCHEDULE "A"

- 43 - bottles of various brands of assorted alcoholic beverages
- 4 - bottles of Ballantine's Liqueur - Blended Scotch Whisky
- 2 - bottles of Johnnie Walker's Red Label Blended Scotch Whisky
- 1 - bottle of Golden Crown Blended Scotch Whisky
- 2 - empty liquor cardboard boxes
- 1 - Chevrolet sedan, Serial No. 2EA052447, Engine No. 5128031, 1945 N. J. Registration JO-62-Z
- 1 - Pontiac sedan, Serial No. L6JA8848, Engine No. 6-839790, 1945 N. J. Registration JH-16-B
- 1 - Oldsmobile sedan, Serial No. L214029, Engine No. LA300773, 1945 N. J. Registration EU-62-L

5. APPELLATE DECISIONS - ENGEL v. BELLEVILLE

MARY VICTORIA ENGEL,  
t/a Club Hillcrest,  
  
Appellant,  
  
vs.  
  
BOARD OF COMMISSIONERS OF  
THE TOWN OF BELLEVILLE,  
  
Respondent.

On Appeal

CONCLUSIONS AND ORDER

Sidney Simandl, Esq., Attorney for Appellant.  
Lawrence E. Keenan, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

The appellant appeals from the action of the respondent suspending her license for a period of sixty days after she had been found guilty of charges alleging that she had permitted a brawl on her licensed premises in violation of Rule 5 of State Regulations No. 20, and that she had permitted dancing on her licensed premises in violation of local ordinance. When the appeal was filed, an order was entered staying the suspension pending the outcome of the appeal.

In accordance with Rule 8 of State Regulations No. 15, this case was submitted on the transcript of the proceedings before the local Board. In addition, the testimony of two witnesses was offered on the appellant's behalf at the hearing on the appeal.

The guilty finding on the brawl charge must be reversed. The record fails to demonstrate any responsibility for the fracas by the licensee. Although a fight did occur on the licensed premises shortly after midnight on the morning of October 20, 1945, there is nothing in the testimony to show that the licensee had any reason to anticipate the trouble which occurred on the occasion in question. According to the testimony given by one of the respondent's witnesses "this all happened in a second" and the participants were immediately quieted by the licensee and several of the patrons. While, after a short interval, a further disturbance took place on the street outside the licensed premises, in which the bartender allegedly took part, it does not appear that the latter was the aggressor. Without deciding if, under other circumstances, a licensee may be held accountable for a brawl on the outside of the licensed premises, after it has begun on the inside of the premises, the evidence here leads me to conclude that the burden of proof necessary to sustain the allegations of the charge first mentioned has not been carried by the respondent.

With respect to the second charge, Section 6 of the local ordinance designed to regulate the licensing of public dance halls, reads:

"It shall be unlawful for any licensee acting under a Plenary Retail Consumption license in connection with alcoholic beverages to permit dancing in any part of the licensed premises or building in which licensed premises are located without first having obtained a license under the provisions of this ordinance."

It is admitted that the appellant has no dance license.

The licensed premises consist of two adjacent stores, one of which contains the bar and the other is used as a service room. The dancing occurred in the service room. From the record, it appears that a Mr. Sharp danced with three different women, having at least two dances with each one. On at least one of these occasions another couple also danced in the service room.

The appellant does not contradict these facts. She contends, however, that she had no actual knowledge of the dancing and that, therefore, she did not "permit" any dancing on her licensed premises within the meaning of the ordinance. It is true that there is nothing in the record to show that the licensee or her bartender actually knew that the service room was being used for dancing. However, it does not follow that she may not be held responsible for the dancing which occurred on the licensed premises. It is sufficient to sustain a finding that she "permitted" dancing if the situation is such that she should have known that the ordinance was being violated. Cf. Abe Golub, Inc., Bulletin 658, Item 5, where the following language is used: "Whether the defendant knew that the whiskey was, in the first instance, intended for someone other than a consumer raises a question of fact and 'like any other fact it (knowledge) may be established by any relevant evidence, direct or circumstantial or by inferences reasonably drawn from other competent facts established' by the testimony. State v. Boucher, 119 Conn. 436, 439; 177 A. 383." Compare Bilowith v. Passaic, Bulletin 527, Item 3, where I said:

"Licensees may not avoid their responsibility for the conduct of their premises by merely closing their eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises."

So, in this case, the appellant's liability arises from the fact that the circumstances attending the violation are such that she may not be heard to assert that she was not aware of what was taking place on her licensed premises. Indeed, her failure to observe that patrons of her licensed premises had at least six dances in her service room, "far from affording (her) an escape from the consequence of the violation, is good ground for additional censure". See Re Silverstein, Bulletin 637, Item 11.

It is evident that the reversal of the respondent's determination on the brawl charge must result in a modification of the sixty-day penalty imposed upon the appellant. It may be well to point out, however, that the brawl occurred because one of the patrons became incensed when his wife danced with another male patron. While the appellant is absolved from direct responsibility for the brawl, the seriousness of the violation of the local ordinance is enhanced by the aftermath resulting from permitting dancing on the licensed premises.

Under all of the circumstances, the penalty will be reduced to a suspension for a period of thirty days.

Accordingly, it is, on this 6th day of February, 1946,

ORDERED that the respondent's determination that the appellant permitted a brawl on her licensed premises in violation of Rule 5 of State Regulations No. 20 be and the same is hereby reversed, and its determination that appellant permitted dancing on her licensed premises in violation of local ordinance be and the same is hereby affirmed; and it is

FURTHER ORDERED that plenary retail consumption license C-12 issued to the appellant, Mary Victoria Engel, by the Board of Commissioners of the Town of Belleville, for premises 66-68 Washington Avenue, Belleville, be and the same is hereby suspended for a period of thirty (30) days, commencing at 2:00 a. m. February 11, 1946, and terminating at 2:00 a. m. March 13, 1946.

ALFRED E. DRISCOLL  
Commissioner

6. APPELLATE DECISIONS - DROZDOWSKI v. SAYREVILLE - DISCONTINUED

FRANK DROZDOWSKI,	)	
	)	
Appellant,	)	On Appeal
	)	
v.	)	
	)	ORDER OF DISCONTINUANCE
BOROUGH COUNCIL OF THE	)	
BOROUGH OF SAYREVILLE,	)	
	)	
Respondent.	)	

Vincent Schultz, Esq., Attorney for Appellant.  
Joseph T. Karcher, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from respondent's action, taken on September 28, 1945, whereby it purported to revoke a plenary retail consumption license issued to appellant for premises 238 Mc Arthur Avenue, Sayreville.

Thereafter, and prior to filing the present appeal, appellant applied to the Honorable Clarence E. Case, one of the Justices of the New Jersey Supreme Court, for a writ of certiorari to review the proceedings before the respondent. The writ was allowed and, pursuant to the terms thereof, the matter was heard by Justice Case sitting alone for the Supreme Court. Respondent's revocation of the appellant's license was ordered set aside by Justice Case, and the municipality was advised that there should be a new hearing. In this opinion, I concur.

Both parties have formally stipulated that the instant appeal should be discontinued.

No reason appearing to the contrary, it is, on this 7th day of February, 1946,

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

ALFRED E. DRISCOLL  
Commissioner

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary Proceedings against )

CENTRAL R.R. OF N. J., )  
Shelton Pitney & Walter F. )  
Gardner, Trustees, )  
J. C. Terminal C.R.R., )  
Jersey City, N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-165 issued by the Board of Commissioners of the City of Jersey City. )

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William F. Hanlon, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee, by its attorney, pleads non vult to a charge alleging that, on September 5, 1945, it possessed on its licensed premises two 4/5 quart bottles labeled "Three Feathers Reserve Blended Whiskey" and two 4/5 quart bottles labeled "Schenley Reserve Blended Whiskey", the contents of which were not genuine as labeled, in violation of R. S. 33:1-50.

The file herein discloses that, on September 5, 1945, a Junior Inspector employed by the Alcohol Tax Unit of the Internal Revenue Service seized four bottles of whiskey on defendant's premises when preliminary tests thereof indicated that the contents of the bottles were not genuine as labeled. Subsequent analysis by both a Federal chemist and a chemist employed by the Department of Alcoholic Beverage Control disclosed that the contents varied in proof, acids and solids when compared with analyses of genuine samples.

It is contended on behalf of defendant that an extra bartender employed during the summer apparently was responsible for the refilling of the bottles in question. The fact that the refilling may have been the unauthorized act of an employee constitutes no defense. Re Twelve East Park Street Tavern, Inc., Bulletin 481, Item 9.

Defendant has no previous adjudicated record. I shall suspend defendant's license for a period of twenty days. Cf. Re Johnson, Bulletin 680, Item 10.

Accordingly, it is, on this 8th day of February, 1946,

ORDERED that plenary retail consumption license C-165, issued by the Board of Commissioners of the City of Jersey City to Central R.R. of N.J., Shelton Pitney and Walter F. Gardner, Trustees, for premises at J. C. Terminal C.R.R., Jersey City, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a. m. February 20, 1946, and terminating at 2:00 a. m. March 12, 1946.

ALFRED E. DRISCOLL  
Commissioner

8. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - LICENSE SUSPENDED FOR THE BALANCE OF ITS TERM, WITH PERMISSION TO PETITION TO LIFT UPON CORRECTION OF ILLEGAL SITUATION AND EXPIRATION OF 10 DAYS' SUSPENSION

In the Matter of Disciplinary Proceedings against  
 John J. Kelly & Joseph Silver,  
 t/a Carlton Inn  
 94 Carlton Avenue  
 East Rutherford, New Jersey

Holder of Plenary Retail Consumption License C-21 for the fiscal year 1941-42 and transferred during said year to  
 Carlton Inn (a corporation)  
 for the same premises

Renewed by the said Carlton Inn for each successive fiscal year, and now holding Plenary Retail Consumption License C-21 issued by the Mayor and Council of the Borough of East Rutherford.

CONCLUSIONS

AND

ORDER

James T. Owens, Esq., Attorney for Defendant-licensees.  
 Richard E. Silberman, Esq., Appearing for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensees, Kelly and Silver, pleaded non vult to charges which in substance allege that Kelly, when he applied for a license in partnership with Silver, failed to disclose in the license application that he had not been a resident of New Jersey for five years immediately preceding the date of submission of such application (then a statutory requisite), and that, after dissolving his partnership with Silver and forming a new partnership with George H. Cormack (who also lacked the residence requirement), Kelly concealed Cormack's interest in the license and business conducted thereunder.

The license was transferred to Carlton Inn Inc. shortly after these proceedings were instituted. This corporation was controlled by Cormack's nephew, who was also Kelly's close friend. Such transfer was made expressly subject to any penalties to be imposed in these proceedings.

This transfer was offered as a correction of the unlawful arrangement under which the licensed business has been conducted. While the alleged correction was not entirely satisfactory, the entry of a final order and the imposition of a penalty for the admitted violation was withheld pending the submission of a more satisfactory correction. In the meantime counsel was in the armed forces. I am now advised that there is presently an application pending before the municipal issuing authority to transfer the license to persons who appear to have had no previous interest in such license.

This proceeding remains effective against the current license

held by the corporate licensee because the license was transferred to it upon this condition and, further, because of the provisions of State Regulations No. 16.

This is an unaggravated case of evasion of the former residence requirement. There is a further charge, to which the licensees have likewise pleaded non vult, that on one occasion the licensees sold beer at a picnic, off the licensed premises, viz., in the yard in the rear of the premises.

Because the illegal situation has not as yet been completely corrected, I shall suspend the license for the balance of its term. If the license is properly transferred as above indicated, I shall entertain an application, by verified petition, to lift the suspension; provided, that the suspension will not be lifted until after ten days from the effective date thereof. Re Budowsky, Bulletin 692, Item 12.

In view of the foregoing, the affiliate proceedings brought in this case to cancel the license are dismissed.

Accordingly, it is, on this 7th day of February, 1946,

ORDERED that Plenary Retail Consumption License C-21, issued by the Mayor and Council of the Borough of East Rutherford to Carlton Inn, for premises 94 Carlton Avenue, East Rutherford, be and the same is hereby suspended for the balance of its term, effective at 2:00 a. m. February 11, 1946; and it is further

ORDERED that, upon a correction of the existing unlawful situation by a bona fide transfer, application may be made to me to lift the suspension; provided, however, that such suspension shall not be lifted prior to the expiration of ten (10) days from the effective date of such suspension.

Alfred E. Disoll  
Commissioner.

New Jersey State Library