

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

BULLETIN 533

OCTOBER 23, 1942.

1. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWERS IN LICENSE APPLICATION - FAILURE TO DISCLOSE MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - 30 DAYS' SUSPENSION - FAILURE TO NOTIFY ISSUING AUTHORITY OF EXECUTION OF MORTGAGE COVERING LICENSEE'S FIXTURES, GOODS AND EQUIPMENT, IN VIOLATION OF R. S. 33:1-34 - 5 DAYS' SUSPENSION - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, CONTRARY TO LOCAL ORDINANCE - 10 DAYS' SUSPENSION - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - 10 DAYS' SUSPENSION - TOTAL: 55 DAYS' SUSPENSION, WITH NO REMISSION FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

TIVOLI DELICATESSEN, INC.,
591 Orange Street,
Newark, N. J.,

Holder of Plenary Retail Distribution License D-43 for the fiscal year 1941-42, and renewed as License D-92 for the current fiscal year to Tivoli Delicatessen, Inc. and thereafter extended to Aaron Marder, Receiver for Tivoli Delicatessen, Inc., by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS
AND ORDER

Aaron Marder, Esq., Receiver in Bankruptcy.
Sanford Silverman, Esq., Solicitor for Petitioning Creditors.
I. Robert Scheffrin, Esq., Attorney for Petitioning Creditors
in Bankruptcy.
Joseph J. Breitner, Esq., Attorney for several creditors.
Arthur J. Connelly, Esq., Attorney for Chattel Mortgagee.
William F. Wood, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

A plea of nolo contendere was entered for the defendant-licensee to the following charges:

"1. In your application for license dated November 29, 1941, filed with the Newark Municipal Board of Alcoholic Beverage Control on which plenary retail distribution license D-43 was transferred, you falsely stated 'No' in answer to question 22 thereof, which question asks: 'Has any...individual other than the stockholders hereinbefore set forth any beneficial interest directly or indirectly in the stock held by said stockholder?', whereas in truth and fact Morris Igol, not listed as a stockholder in said application, was beneficially interested as the sole and real owner of the stock held by all of the listed stockholders; said false statement being in violation of R. S. 33:1-25.

"2. In your aforesaid application for license, you falsely stated 'No' in answer to question 23 thereof, which

question asks: 'Does the individual signing this application on behalf of said corporation know, or have any reason whatsoever to believe or suspect that any.....holder directly or indirectly by any device or subterfuge whatsoever, of ten (10) per cent or more in beneficial interest of the capital stock of said corporation would fail to qualify as an individual applicant for the license hereby applied for in any respect?', whereas in truth and fact Edwin Slurzberg who signed the application in your behalf knew and had reason to believe and suspect that Morris Igol, the holder of 100% of your corporate stock directly and indirectly, by device and subterfuge, would fail to qualify as an individual applicant for the license by reason of his lack of five years' residence in New Jersey immediately prior to the submission of said application for license; said false statement being in violation of R. S. 33:1-25.

"3. In your aforesaid application for license, you falsely stated 'No' in answer to question 27 thereof, which question 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 Morris Igol was so interested as the sole and real owner of the business to be conducted under said license; said false statement being in violation of R. S. 33:1-25.

"4. From on or about December 11, 1941 and until the present time, you knowingly aided and abetted Morris Igol, a non-licensee, to exercise the rights and privileges of your plenary retail distribution license transferred and issued to you by the Newark Municipal Board of Alcoholic Beverage Control for premises 591 Orange Street, Newark, N. J., contrary to R. S. 33:1-26; in violation of R. S. 33:1-52.

"5. You failed, within ten days after the occurrence thereof, to give notice in writing to the Newark Municipal Board of Alcoholic Beverage Control of a change in the facts set forth in your application for license in that you failed to give notice of your giving on December 18, 1941, to Joseph Levine a chattel mortgage upon the fixtures, goods and equipment used and to be used in connection with the conduct of the licensed business; said failure being in violation of R. S. 33:1-34.

"6. On Sunday, June 21, 1942, at or about 10:00 A.M., you sold and served an alcoholic beverage in violation of section 1 of ordinance #2399 concerning alcoholic beverages, adopted by the Board of Commissioners of the City of Newark on May 20, 1942, which ordinance prohibits the sale of alcoholic beverages before noon on Sundays.

"7. On or about May 21, 1942, without having first obtained a special permit so to do, you sold a pint bottle of Mount Vernon Maryland Straight Rye Whiskey (bottled in bond) below the minimum consumer price published in Bulletin 508 of this Department, in violation of Rule 6 of State Regulations No. 30."

There was no appearance at the hearing on the part of the defendant-licensee, a corporation, the plea having been entered by the receiver in the bankruptcy proceedings. The record before me conclusively supports the charges and leaves no doubt as to the guilt of the defendant-licensee.

Morris Igol, who on the surface appeared to be a \$35.00 a week employee of the defendant corporation, was actually the real owner of the business conducted by the licensee. Igol was disqualified from holding a license as an individual by reason of his not having been a resident of this State for five years as required by the New Jersey Alcoholic Beverage Law. R. S. 33:1-25. For the same reason, any corporation in which Igol had more than a ten per cent interest was likewise disqualified from holding a retail license. R. S. 33:1-12.1. These facts were known to Edwin Slurzberg, who signed the application for the license as President of the defendant corporation. In fact, the record discloses that Slurzberg and other stockholders had endorsed in blank the stock certificates issued in their names and delivered the same to counsel for the disqualified Igol.

The records before me further disclose that the defendant corporation failed to give the notice required by R. S. 33:1-34 when a chattel mortgage was placed on all of its fixtures, goods and equipment.

With respect to the charge of selling alcoholic beverages during prohibited hours in violation of Section 1 of the Newark ordinance, and the further violation of Rule 6 of State Regulations No. 30 (Fair Trade), suffice it to say that there is no question as to the guilt of the defendant-licensee.

At the hearing it was suggested that the Sunday sale and the Fair Trade violations were the result of Igol's effort to "get square" with corporate creditors. This argument finds no support in the record.

The illegal "front" arrangement covered by the charges, concocted in 1941 and continued after July 1, 1942, appears to have been the result of a deliberate effort to "beat" the New Jersey law.

The fact that the defendant has been adjudged a bankrupt and that its license has been extended under R. S. 33:1-26 to the bankruptcy receiver does not bar or abate these proceedings in any respect. Counsel representing creditors have asked that leniency be exercised in the imposition of penalty upon the ground that they (the creditors), while guilty of no wrongdoing, would be the ones against whom the penalty would work adversely.

The Alcoholic Beverage Law puts all creditors on notice that, when extending credit, they take the risk of dealing with a debtor who will abide by the rules, and that they may not look to the license as a reachable asset. R. S. 33:1-26 specifically provides that under no circumstances "shall a license, or rights thereunder, be deemed property, subject to *** lien, levy, attachment, execution, seizure for debts ***."

As to Charges (1) to (4) inclusive, defendant's license will be suspended for thirty days. As to Charge (5), an additional five-day penalty will be imposed. Likewise, a ten-day suspension will be imposed for violation of the Newark ordinance and, similarly, a ten-day suspension will also be imposed for the Fair Trade violation.

Accordingly, it is, on this 9th day of October, 1942,

ORDERED, that Plenary Retail Distribution License D-92, heretofore issued to Tivoli Delicatessen, Inc. and thereafter extended to Aaron Marder, Receiver for Tivoli Delicatessen, Inc., for premises 591 Orange Street, Newark, be and the same is hereby suspended for fifty-five (55) days, commencing at 2:45 A. M. October 13, 1942 and terminating at 2:45 A. M. December 7, 1942.

ALFRED E. DRISCOLL,
Commissioner.

2. ELIGIBILITY - SALE OF ALCOHOLIC BEVERAGES WITHOUT LICENSE SINCE REPEAL - ABSENCE OF AGGRAVATING CIRCUMSTANCES - HELD NOT TO INVOLVE MORAL TURPITUDE - APPLICANT DECLARED ELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

October 9, 1942

Re: Cases No. 461 and No. 462

Applicants, who are husband and wife, seek a ruling as to whether their conviction of violating the Alcoholic Beverage Law involved the element of moral turpitude, and hence, pursuant to R. S. 33:1-25, 26, disqualifies them from holding a liquor license or working for a liquor licensee in this State.

Applicants were convicted in 1936 of selling alcoholic beverages without a license. It appears that in 1935 the husband held a plenary retail consumption license for his restaurant premises and that such license was revoked because he sold alcoholic beverages after hours; that husband and wife continued to conduct a restaurant after such revocation and one of their waiters sold drinks of alcoholic beverages to agents of this Department. For this the husband was fined \$200.00, and the wife and waiter, who were also arrested, each received a suspended sentence. The wife has no previous criminal record. The husband was arrested on one other occasion, during Prohibition, for a run-of-the-mill liquor violation, which did not involve moral turpitude.

A single conviction of sale of alcoholic beverages without a license after Repeal does not involve moral turpitude, unless it is an aggravated case. The unlicensed sale of alcoholic beverages by a person who formerly held a liquor license has been heretofore held not an aggravated circumstance of such character as to impart the element of moral turpitude to the crime. See Case No. 375, Bulletin 465, Item 8; Case No. 241, Bulletin 290, Item 8; and Case No. 188, Bulletin 212, Item 2.

It is therefore recommended that applicants be advised that they are eligible to hold a liquor license or to be employed by a liquor licensee in this State.

It should be noted that all that is here decided is that applicants are not automatically barred from the liquor industry by the Statute. Whether applicants, apart from this consideration, are otherwise personally fit to hold a liquor license is a matter which the issuing authority should determine for itself, if either of the applicants hereafter apply for a liquor license or permit.

Harry Castelbaum,
Attorney.

APPROVED:
ALFRED E. DRISCOLL,
Commissioner.

3. APPELLATE DECISIONS - TRIFARI v. EATONTOWN.

JOSEPH TRIFARI,)
)
 Appellant,)
)
 -vs-)
)
 BOROUGH COUNCIL OF THE)
 BOROUGH OF EATONTOWN,)
)
 Respondent)
 -----)

CONCLUSIONS AND ORDER

Giordano, Golden & Hurley, Esqs., by Henry Giordano, Esq.,
 Attorneys for Appellant.
 Snyder, Roberts & Pillsbury, Esqs., by Howard W. Roberts, Esq.,
 Attorneys for Respondent.

BY THE COMMISSIONER:

Respondent refused to renew appellant's plenary retail consumption license for premises on Locust Avenue, Eatontown, on the ground that those premises had been misconducted during the past fiscal year (1941-42). Hence this appeal.

Appellant's tavern is located between the service camps of Fort Monmouth and the 113th Infantry Combat Team, Company K. The rear of the latter camp is about 200 yards from appellant's premises. Two officers of Company K testified at the appeal hearing that, at the beginning of this year, appellant was notified that soldiers of that Company, while carrying arms or having no leave pass, should not be served with alcoholic beverages. Despite this admonition, the officers testified that, on at least two occasions thereafter, they observed armed soldiers from their Company in a partially intoxicated condition at appellant's tavern, and on each such occasion one of the soldiers was a minor.

The local Chief of Police testified that, on February 13, 1942, he questioned three girls, all minors, whom he found on the licensed premises, and he learned that they had "hitch hiked from Belmar to the Sunset Inn (appellant's tavern) to have a good time with the soldiers." Upon further investigation, he learned that these minor females were of loose character and, after calling this to the appellant's attention, instructed him not to allow them on his premises. Nevertheless, he saw those girls at the tavern in the company of soldiers at least eight times thereafter. On one of these occasions, after again advising appellant of the questionable reputation of the minor females and directing that they not be permitted on the premises, appellant told the Chief that "if he could not have these girls present he could not make a dollar." This witness further testified that on many occasions he had observed soldiers leaving the premises in an intoxicated condition.

I have heretofore indicated quite clearly that licensees who permit members of our armed forces to drink to excess will be dealt with harshly and summarily. In Re Traverso, Bulletin 519, Item 12, where I revoked the license, I said:

"It is an unpatriotic act for a licensee or anyone else to sell, serve or give alcoholic beverages to a man in the uniform of his country who is at the time actually or apparently intoxicated. I can imagine few more contemptible or dangerous activities. Those who violate the regulation previously cited are a menace to our national security.

"On one or more occasions we have stated that we would not tolerate the sale of alcoholic beverages to men in uniform where they were actually or apparently under the influence of liquor. We meant exactly what we said. The licensee is guilty as charged. The license in this case will therefore be revoked and the licensee thereby disqualified from holding or receiving any other license for a period of two years. This admittedly harsh penalty is entirely warranted under the circumstances. This country is at war. It is the duty of licensees as well as of civilians generally to protect rather than to harm members of our armed forces. Licensees who either fail to recognize this duty or to assume the full measure of responsibility with respect thereto will not be permitted to continue in business in this State."

Under the circumstances, it is unnecessary to detail any of the other acts of misconduct charged against appellant. In view of the foregoing testimony, respondent was fully justified in refusing to renew appellant's license. However, it also appears from an extract of the local police blotter introduced into evidence that on fourteen separate occasions between November 1941 and June 1942 the Chief of Police was obliged to visit the tavern either because of the presence of soldiers or because of disturbances which had occurred there.

The action of respondent is affirmed.

Accordingly, it is, on this 9th day of October, 1942,

ORDERED, that the petition of appeal be and the same is hereby dismissed; and it is further

ORDERED, that the extension of appellant's 1941-42 license, granted by order of June 29, 1942 to permit appellant to continue to operate pending disposition of this appeal, be and the same is hereby terminated, and that the appellant forthwith cease any alcoholic beverage activity thereunder.

ALFRED E. DRISCOLL,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - OPERATION OF LICENSED PREMISES UNDER THE LICENSE OF FORMER OWNER, IN VIOLATION OF R. S. 33:1-26 - ILLEGAL SITUATION CORRECTED JULY 1, 1942 - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against WM. HOFFMAN & SONS, INC., 116 Liverpool Ave., Egg Harbor City, N. J., Holder of Plenary Retail Distribution License D-3 issued by the Common Council of the City of Egg Harbor.

CONCLUSIONS AND ORDER

Wm. Hoffman & Sons, Inc., by Joseph Husta, President. William F. Wood, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleaded guilty to a charge alleging that from January 5 to June 30, 1942 it operated the licensed premises involved herein under the license of the former owner, Lillian C. Hoffman, in violation of R. S. 33:1-26.

The record discloses that Lillian C. Hoffman owned the business until January 5, 1942, when she sold out to the corporation. The license, however, continued to remain in her name until July 1, 1942, when the corporation was granted the license under which it is now operating.

It is not clear why the license was not transferred to the corporation when it became the owner of the licensed business. The President of the corporation testified that there was some disagreement between the corporation and its attorney concerning the latter's fee for legal services rendered to the corporation. As a result, the attorney refused to relinquish the corporate books and also failed to advise the corporation of the date of its legal formation. The fact remains, however, that from January 5 to June 30, 1942 the corporation had complete control of the licensed business and transacted all of its affairs in the corporate name without actually transferring the liquor license to itself.

Since the corporate license was validly issued to it at the beginning of this fiscal year, the admitted violation does not warrant any increased penalty as in cases where the "front" was created or continued after July 1, 1942. See Bulletin 512, Item 9. I shall, therefore, suspend the license for a period of ten days. Cf. Re Fromm, Bulletin 500, Item 8.

Accordingly, it is, on this 15th day of October, 1942,

ORDERED, that Plenary Retail Distribution License D-3, heretofore issued to Wm. Hoffman & Sons, Inc. by the Common Council of the City of Egg Harbor for premises 116 Liverpool Ave., Egg Harbor City, be and the same is hereby suspended for a period of ten (10) days, commencing October 20, 1942, at 7:00 A.M. and concluding October 30, 1942, at 7:00 A. M.

ALFRED E. DRISCOLL, Commissioner.

5. AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - SALE OF ALCOHOLIC BEVERAGES TO MINORS - LICENSEE PAID FINE OF \$100.00 - LICENSED PREMISES CLOSED FOR 25 DAYS - PETITION TO LIFT GRANTED.

In the Matter of Petition by)

EINMORE CORP.,)
431½-433 Orange St.,)
Newark, N. J.,)

ON PETITION
CONCLUSIONS AND ORDER

to lift the automatic suspension)
of Plenary Retail Distribution)
License D-108 issued by the Muni-)
cipal Board of Alcoholic Beverage)
Control of the City of Newark.)

Daniel G. Kasen, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

It appears from the petition filed herein that, on October 7, 1942, Leon Adlerstine, President and principal stockholder of licensee, pleaded non vult to an indictment alleging that he had sold alcoholic beverages to a minor. It further appears that, on October 14, 1942, he was sentenced to pay a fine of \$100.00 as a result of said conviction, and that the fine has been paid. Because of said conviction, petitioner's license has been automatically suspended. R. S. 33:1-31.1.

This case concerns the sale of alcoholic beverages to a male minor during the past fiscal year, to wit, on February 28, 1942, at which time petitioner held Plenary Retail Distribution License D-157. Disciplinary proceedings because of said sale were instituted against the petitioner's former license by the Municipal Board of Alcoholic Beverage Control of the City of Newark, as a result of which such former license was suspended for thirty days, less five days for the guilty plea, or a net suspension of twenty-five days. The suspension was effective from April 20, 1942 to May 15, 1942.

The records of this Department disclose that petitioner has no other or previous record. Since the licensee has served its suspension as aforesaid and its President and principal stockholder has paid the fine imposed in the criminal proceedings, I conclude that licensee has been sufficiently punished and shall, hence, lift the automatic suspension of its license.

Accordingly, it is, on this 14th day of October, 1942,

ORDERED, that the automatic suspension of Plenary Retail Distribution License D-108, heretofore issued to Einmore Corp. by the Municipal Board of Alcoholic Beverage Control of the City of Newark for premises 431½-433 Orange Street, Newark, be and the same is hereby lifted, effective immediately.

ALFRED E. DRISCOLL,
Commissioner.

6. ELIGIBILITY - CRIME OF BREAKING, ENTERING AND RECEIVING STOLEN GOODS INVOLVED MORAL TURPITUDE - APPLICANT (A NON-RESIDENT) DECLARED INELIGIBLE FOR EMPLOYMENT BY LIQUOR LICENSEE.

October 15, 1942

Re: Case No. 456

Applicant seeks a non-resident's employment permit and in his application therefor disclosed that in 1934 he was convicted of breaking and entering.

This proceeding is to determine whether applicant's conviction involved the element of moral turpitude, and hence, pursuant to R. S. 33:1-26, disqualifies him from working for a liquor licensee in this State.

At the hearing, applicant testified that the date given in his application was an error, and that he was actually convicted in 1937 and released from prison in June 1938. He stated that he was born on January 11, 1920; hence, according to his testimony, he was about 17½ years of age when he committed the crime. If these facts were accurate, his youth would be a pertinent circumstance in determining whether his crime involved the element of moral turpitude. Re Case No. 380, Bulletin 460, Item 5.

However, his recollection as to the various dates is not in accord with the record. The probation officer who had charge of the case reports that applicant was arrested on March 21, 1938 on charge of breaking, entering and larceny; that on April 1, 1938 he pleaded guilty to burglary, entering and receiving stolen goods; that on April 29, 1938 he was sentenced to pay a fine of \$50.00 and costs and to serve fifteen to thirty months in the county jail; and that he was released from prison on June 21, 1939. It therefore appears that applicant was over 18 years of age at the time of his conviction.

Applicant's version of what occurred is that he and another youthful companion, anxious to obtain additional spending money, gave way to a sudden impulse, entered a dwelling and were there caught after they had stolen some money.

The crime of burglary, entering and receiving stolen goods ordinarily involves moral turpitude. Re Case No. 380, supra; Re Case No. 150, Bulletin 468, Item 11. Nothing has been presented in the instant case to eliminate that element.

It is therefore recommended that applicant be advised that by reason of his conviction of a crime involving moral turpitude, he is automatically disqualified, pursuant to R. S. 33:1-26, from working for a liquor licensee in this State, and hence, that his pending application for an employment permit is denied.

Harry Castelbaum,
Attorney.

APPROVED:

ALFRED E. DRISCOLL,
Commissioner.

7. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - ILLEGAL SITUATION CORRECTED - 20 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

ROSS F. REED,)
T/a THE HOMESTEAD TAP,)
229 Raritan Avenue,)
Highland Park, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of Highland Park, and which license has, during the pendency of these proceedings, been transferred by said Borough Council to)

CHARLES W. THOMAS,)

for the same premises.)

Heston N. Potts, Esq., Attorney for Defendant-Licensee.
Abraham Merin, Esq., Attorney for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee entered a plea of non vult to the following charges:

1. He falsely answered Question 30 in his license application by stating that no one other than himself had any interest in the business conducted under the license, whereas in fact Charles W. Thomas was so interested, said false statement being in violation of R. S. 33:1-25.

2. From on or about January 5, 1942 and until the present time, he knowingly aided and abetted Charles W. Thomas, a non-licensee, to exercise the rights and privileges of his license contrary to R. S. 33:1-26, in violation of R. S. 33:1-52.

The facts appear to be that Charles W. Thomas, during the latter part of 1941, executed a contract to purchase a tavern business. Shortly afterward, he apparently discovered for the first time that he could not qualify as a liquor licensee because a local ordinance required a one year's residence in Highland Park prior to filing an application for a liquor license. Since Thomas, although a resident of the State for many years, was not a resident of the community, and hence could not comply with the residence requirement, he had the license taken out in the name of his employee Ross F. Reed, who was a resident of Highland Park.

The defendant readily admitted in a signed statement that he had never had any interest in the license but had merely taken it out in his name to accommodate his employer. Charles W. Thomas also admitted in a signed statement that he was the true owner of the licensed business. Both the defendant and Thomas made no effort to conceal the truth when inquiry was made of them concerning the ownership of the business.

However, this cooperative attitude on the part of the defendant cannot serve to relieve him from penalty for this clear violation of the law. The unlawful conduct of the business originated during the last licensing year. In making application for a renewal of this license for the current fiscal year, the defendant again concealed the true ownership of the business despite my warning of June 1, 1942 (Bulletin 512, Item 9), wherein I said:

"Fair warning is hereby given that, in all disciplinary cases involving a 'front' created or continued after July 1, 1942, the penalty will be outright revocation of the license or suspension for a period of time as will adequately punish the violator and break up the practice.

"There is no excuse for perjury. Applicants for liquor licenses must answer each question in the application frankly and honestly. Public policy in this State demands a full disclosure of all persons interested in the application and the business. False swearing will not be tolerated."

Because of this an increased penalty is warranted in this case. However, I shall consider the fact that the unlawful situation existing herein has been corrected by a transfer of the license from Ross F. Reed to Charles W. Thomas and the fact that the Highland Park ordinance has been amended so that Thomas is qualified to hold a license.

I have fully considered all the facts in this matter and have reached the conclusion that the license must be suspended for a minimum penalty of twenty days.

Accordingly, it is, on this 15th day of October, 1942,

ORDERED, that Plenary Retail Consumption License C-1, heretofore issued to Ross F. Reed, t/a The Homestead Tap, and transferred during the pendency of these proceedings to Charles W. Thomas, for premises 229 Raritan Avenue, Highland Park, by the Borough Council of the Borough of Highland Park, be and the same is hereby suspended for a period of twenty (20) days, commencing at 1:30 A. M. October 19, 1942, and concluding at 1:30 A. M. November 8, 1942.

ALFRED E. DRISCOLL,
Commissioner.

8. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN LICENSE APPLICATION - SUPPRESSION OF MATERIAL FACTS - 10 DAYS' SUSPENSION.

ORDER TO SHOW CAUSE DISMISSED.

In the Matter of Disciplinary Proceedings against NEW STAR LIQUORS, INC., T/a NEW STAR LIQUORS, 1154 1/2 Springwood Avenue, Asbury Park, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-26 for the fiscal year 1941-42, and holder of Plenary Retail Consumption License C-26 for the fiscal year 1942-43, issued by the City Council of the City of Asbury Park.

Ferdinand D. Masucci, Esq., Attorney for Defendant-Licensee. William F. Wood, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleaded not guilty to the following amended charge:

"In your application for license dated June 13, 1941, filed with the City Council of the City of Asbury Park, upon which Plenary Retail Consumption License C-26 for the 1941-42 period was granted, you falsely stated and evaded and suppressed material facts by answering 'No....Albert Brown conviction of possession of No Slips in 1938. \$50.00 fine', in answer to Question 30 therein, which asks, 'Have you or has any person mentioned in this application ever been convicted of any crime? --- If so, state details as to each conviction, giving the name of the person convicted, date thereof, nature of the crime, court in which the conviction was entered and sentence imposed', whereas in truth and fact Albert Brown, mentioned in divers places in said application, had not been convicted of the crime of possession of number slips in 1938 but had been convicted in the Court of Quarter Sessions of Monmouth County on April 17, 1935 for possession of number slips and was fined \$100.00; had been convicted in Asbury Park Police Court on October 31, 1934 for a similar offense and was fined \$25.00; had been convicted in said court on June 8, 1937 for a similar offense and was fined \$25.00; had been convicted on July 28, 1937 in said court for a similar offense and was fined \$50.00; and had been convicted on August 26, 1937 in said court for a similar offense and was fined \$50.00; said false statement, evasion and suppression of facts being in violation of R. S. 33:1-25."

Defendant-licensee also appeared in opposition to an order to show cause why its license for the present fiscal year should not be cancelled because said license was issued in violation of R.S.33:1-25 in that said Albert Brown, an officer and holder of more than 10% of stock of defendant corporation, would fail to qualify as an individual applicant because of the convictions set forth in the aforesaid charge. Albert Brown is President and Treasurer of defendant corporation and the holder of 50% of its capital stock.

Defendant-licensee does not dispute the fact that Question 30 in its application for the 1941-42 license was answered as set forth in the charge. It does not dispute the fact that Albert Brown was convicted of the five offenses set forth in the charge. However, as to said charge, it contends that there was no intent to deceive. As to the order to show cause, it contends that Albert Brown is fully qualified as an individual applicant because none of the crimes of which he was convicted involves moral turpitude.

As to the charge: Albert Brown testified that the application for the 1941-42 license had been made out by an attorney who represented him in all five of the lottery cases and was, therefore, well aware of all of the convictions. The attorney who filled out the application is not the attorney for defendant herein. It was admitted by Brown that he had executed said application as President of defendant corporation and that he had signed and had sworn to the affidavit therein which states, among other things, that "all of the foregoing answers, statements and declarations made thereto are absolutely true in all respects." If an applicant chooses to entrust the responsibility of filling out its application to an attorney or any other person, the applicant must stand ready to assume the responsibility and consequences of any error, omission or wrongful act by such person. Re Carabelli, Bulletin 174, Item 15. The answer in the application filed on June 13, 1941 was false. Hence I find defendant guilty as charged.

As to the order to show cause: On behalf of defendant, it is contended that none of the crimes of which Brown was convicted involve moral turpitude. The meaning of the term "moral turpitude" is not clearly defined. In general, the term implies an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow man or to society in general. In Re Ulhich, Bulletin 70, Item 2, it was said that "commercialized gambling" involved moral turpitude. Following this decision, it was decided in Re Case No. 239, Bulletin 305, Item 9, that a conviction on a gambling charge of the head man of a ring conducting gambling establishments where the activities of the ring were attended by methods of violence involved moral turpitude. See also Re Case No. 283, Bulletin 337, Item 14. However, it has been decided in numerous cases that a single conviction for possessing number slips does not involve moral turpitude. The question here presented is whether repeated convictions on said charge necessarily involve that element.

In Re Case No. 246, Bulletin 293, Item 10, Commissioner Burnett approved a recommendation that applicant therein be advised that he was not eligible to be employed by a liquor licensee. Applicant therein had been sentenced to one year in State's Prison after a second conviction for bookmaking. In that case the Commissioner said:

"The case exhibits a bent of mind - an obtuseness to the rules of organized society - a continued refusal to abide thereby, which is a potent, if not so glaring, form of moral turpitude."

In Re Case No. 314, Bulletin 393, Item 9, Commissioner Burnett approved as to result a recommendation that an applicant convicted for the fifth time of gambling was ineligible to be employed by a liquor licensee. The two cases last cited were, in my opinion, correct in result because it appeared that each applicant was an unfit person to hold a license or to work for a licensee. I believe, however, that each case must be determined on the facts which appear therein. I am not prepared to say that a crime which does not involve moral turpitude can acquire that element merely by repetition. If defendant had

applied to me for a State license, I would probably have reached the result that Brown was an unfit person to hold a license and would have denied the application. So, also, if the local issuing authorities had denied defendant's license because of Brown's criminal record, I would probably have sustained its action on appeal. However, it appears herein that the City Council of Asbury Park renewed defendant's license for the present fiscal year on an application filed by defendant which fully disclosed Brown's criminal record. The testimony in this case shows that, between 1934 and 1937, Brown conducted a stationery store in Asbury Park and sold lottery tickets therein. He was not the head of the lottery. He testified that he had no interest in the lottery aside from the sale of the tickets. Under the circumstances, I conclude that he has not been convicted of a crime which, by statute, disqualifies him from holding a license. He may or may not, because of his convictions, be a fit person to hold a license or to hold stock in a licensed corporation. The question of his general fitness has been decided in his favor by the local issuing authorities under the power conferred upon them by R. S. 33:1-24. Cf. Re Petti, Bulletin 502, Item 5. Hence, I shall dismiss the order to show cause.

As to penalty: Failure of defendant to reveal fully the criminal record of Albert Brown in its application filed for the fiscal year 1941-42 is a serious violation. I shall suspend its license for the fiscal year 1942-43 for a period of ten days. Re Di Orio, Bulletin 509, Item 8.

Accordingly, it is, on this 15th day of October, 1942,

ORDERED, that Plenary Retail Consumption License C-26 (for fiscal year 1942-43) issued to New Star Liquors, Inc., t/a New Star Liquors, by the City Council of the City of Asbury Park, for 1154½ Springwood Avenue, Asbury Park, be and the same is hereby suspended for ten (10) days, commencing October 20, 1942, at 2:00 A.M. and terminating October 30, 1942, at 2:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

9. CANCELLATION PROCEEDINGS - DISMISSED.

In the Matter of Cancellation)
Proceedings against)

WILLIAM P. COZENS and)
WILLIAM B. LOTT,)
275 Halsey Street,)
Newark, New Jersey,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-943, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)

Harry G. Cohen, Esq., Appearing Pro Se as assignee for the benefit of creditors of Antonina Rebolledo, the old licensee; also as attorney for Cozens and Lott, the present licensees.
William F. Wood, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendants plead not guilty to the following charge:

"Said license was granted in violation of section 1(a) of ordinance #2419 adopted by the Newark Board of Commissioners on May 4, 1938, as amended by section 1 of ordinance #2061 adopted by the Newark Board of Commissioners on March 25, 1942, prohibiting the granting of any new plenary retail consumption license until the number of such licenses issued and outstanding shall be less than nine hundred, in that there were issued and outstanding more than nine hundred such licenses at the time your license was granted, your license not being a renewal license excepted from the prohibition of the ordinance aforesaid for the reason that the transfer to you of plenary retail consumption license C-918 for the year 1941-42 from Harry G. Cohen, assignee for the benefit of creditors of Antonina Rebolledo, was unlawful in that said license C-918 was unlawfully extended to Harry G. Cohen, assignee as aforesaid."

The facts are that Antonina Rebolledo, the former holder of the license for these premises, assigned her assets to Harry G. Cohen for the benefit of creditors. On May 29, 1942 the Municipal Board of Alcoholic Beverage Control of the City of Newark extended the license to Cohen as assignee and he operated the tavern business. Later, Cohen sold the business and transferred the license to the defendants.

The sole question before me is whether or not Cohen should have been granted the extension without first obtaining a court order. Cohen contends that a court order was not necessary although he did apply for an order at this Department's request. The Judge to whom he made application was of the opinion that no order was necessary and therefore denied the application. Subsequently, upon this Department's insistence, Cohen applied for and was granted an order nunc pro tunc. R. S. 33:1-26 provides that:

"In case of death, bankruptcy, receivership or incompetency of the licensee, or if for any other reason whatsoever the operation of the business covered by the license shall devolve by operation of law upon a person other than the licensee, the commissioner or other issuing authority may, in his or its discretion, extend said license for a limited time, not exceeding its term, to the executor, administrator, trustee, receiver or other person upon whom the same has devolved by operation of the law as aforesaid..."

In cases where an assignee for the benefit of creditors has been appointed, it has been this Department's policy to require a court order as provided for in R. S. 2:34-17 so as to remove any doubt that the operation of the business devolved upon the assignee. It was for this reason that this Department was insistent that such an order be obtained.

On September 14, 1942 an order nunc pro tunc was entered in the Essex County Orphans' Court validating the acts of Cohen from the inception when he took over as assignee for the benefit of creditors. In view of such order, the extension and subsequent transfer will not be disturbed.

Accordingly, it is, on this 16th day of October, 1942,

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

ALFRED E. DRISCOLL,
Commissioner.

10. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGE BELOW FAIR TRADE MINIMUM - NO INTENT TO CHISEL - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

JERRY DeROSA,
227 Old Bergen Road,
Jersey City, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution License D-8, issued by the Board of Commissioners of the City of Jersey City.

Jerry DeRosa, Pro Se.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded guilty to a charge of selling a one-gallon jug of Italian Swiss Colony Special Wine (the Fair Trade price being \$2.40) for \$2.25, in violation of Rule 6 of State Regulations No. 30.

At the time our investigators made the purchase, the licensee alleged that he had made a mistake. I have reviewed the file and find no evidence of a deliberate attempt by defendant to cut-rate on the price of the item. Defendant has no prior record. Hence I shall impose the minimum penalty of ten days, with five days taken off for the guilty plea. Re Caldwell, Inc., Bulletin 515, Item 4.

Accordingly, it is, on this 16th day of October, 1942,

ORDERED, that Plenary Retail Distribution License D-8, heretofore issued to Jerry DeRosa for premises 227 Old Bergen Road, Jersey City, by the Board of Commissioners of the City of Jersey City, be and the same is hereby suspended for a period of five (5) days, commencing October 26, 1942, at 2:00 A.M., and terminating October 31, 1942, at 2:00 A. M.

Robert E. Trissell
Commissioner.

RECEIVED BY 10