

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

BULLETIN 312

APRIL 26, 1939.

1. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - NOISE, EMPLOYMENT OF FEMALES AND SALES OUT OF HOURS ON UNLICENSED PREMISES.

In the Matter of Disciplinary Proceedings against

ABRAHAM GELLER,
105 Magazine St.,
Newark, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-860, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.
James T. Owens, Esq., Attorney for the Defendant-Licensee.

BY THE COMMISSIONER:

The defendant is charged with -

(1) & (2) permitting unnecessary noises at his tavern on October 23 and 30, 1938, contrary to State Regulations 20, Rule 5;

(3) employing a female on those dates to tend bar and sell and serve liquor, contrary to resolution of the Newark Board of Alcoholic Beverage Control of August 29, 1934;

(4) selling and serving liquor between 3:00 A.M. and 7:00 A.M. on Wednesday, November 2, 1938, contrary to Newark Ordinance #6579, as amended through December 23, 1936 (which prohibits sale or service of liquor, or liquor premises to be open, between those hours on weekd ys); and

(5) selling liquor outside his licensed premises on November 2, 1938, contrary to the terms of his license and R.S. 33:1-2.

As to (1) and (2): The defendant's tavern is located at the corner of Magazine and Komorn Streets, in a neighborhood that is of a mixed business and residential character. His premises - consisting of a barroom in the front, followed by a sitting room and a kitchen in the rear - occupy the first floor of a three-story building, the second and third floors of which are flats occupied by families. The main tavern entrance faces the street intersection at a cater-corner. On Magazine Street, there is an entrance into the building which leads to the flats upstairs; on Komorn Street, there is a rear entrance which communicates both with the defendant's kitchen and with the upstairs.

Shortly before midnight, Saturday, October 22, 1938, Investigators Kane and DiPietro of this Department visited the persons then living on the second floor, and stayed in their flat until

1:00 A.M., to investigate their complaint that the tavern was being operated with excessive noise. While there, the investigators observed that "downstairs there was considerable noise - excessive - to this extent", that there was an accordion playing (which at one time "played 'Alexander's Ragtime Band', and everybody in the place sang the song, and it was very loud"), music from an electric victrola, dancing, and stamping of feet (which caused a gas stove in the kitchen to shake). At 1:00 A.M., the investigators stationed themselves for some ten minutes on Komorn Street about 100 feet from the tavern, and heard "talking, laughing and singing." The noise was mainly audible only on that street, the defendant's sitting room being located along it. The investigators then entered the tavern and stayed there until 2:45 A.M., when it closed.

They returned to the neighborhood at 12:30 A.M. Sunday morning, October 30, 1938. Observing the tavern from the outside until 1:00 A. M., they heard no noise on Magazine Street but heard on Komorn Street the same kind of noise as on October 23. They then entered the tavern where they remained until 2:50 A.M. While they were there, the singing and music playing (victrola and accordion) continued "unusually loud" and at one time "there was a fellow and girl dancing what they call 'The Shag'".

On both occasions, the tavern, which caters to a "home trade", was quite busy. It appears to have been busier and noisier on the second occasion.

The tenant whom the investigators visited testified that there was "entirely too much noise" on "every Friday, Saturday, and Sunday night of every week in the last four years", and that he complained to the defendant "a dozen different times." This tenant moved into the flat, from across the street, around Labor Day, 1934, when the tavern was already in existence, and remained there until the middle of November when he moved out pursuant to notice to quit. He was himself a patron at the tavern until at least October 15 or 23, 1938. While there on October 15, drinking beer, he suggested that the accordion player tone down his music and the musician complied by playing "real low." However, when the musician broke into the strains of a Polish hop, a quarrel developed between the tenant and the defendant over the noise. At 11:04 P.M., at 11:52 P.M., and at 12:15 A.M., the Newark police responded to the tenant's repeated calls but found no unnecessary noise at the tavern.

The defendant testified that the only music at the tavern, other than an electric victrola which plays on insertion of a coin, is an accordion on Saturday nights; that he tones down the music after midnight, and keeps the patrons in check when they get noisy; that the only time the tenant upstairs complained about noise was on the occasion of their quarrel on October 15, 1938.

The police officer who patrols the "beat" in this vicinity testified that he has never encountered unusual noise at the defendant's tavern during either the late or early hours. Three neighbors in the immediate vicinity (the tenant living on the third floor of the building where the defendant's tavern is located; a person living on Magazine Street, directly across from the tavern; and a person living on Komorn Street, immediately to the rear of the tavern) similarly testified that they have never been disturbed by the tavern.

Taverns are attendant with a certain amount of inescapable noise. Re R. & F. Co., Bulletin 292, Item 8. Rule 5 of State Regulations 20 is designed (among other things) to prevent their becoming

nuisances by reason of "unnecessary noises." The neighborhood of the defendant's tavern is of a mixed business and residential character. The noise in question occurred on late Saturday nights and early Sunday mornings. The police officer on the "beat", and three nearby residents, assert that the tavern has never caused disturbance. The only nearby resident to complain is the tenant who, until recently, lived over the tavern.

I conclude that the Department has not sustained its burden of proving that the tavern was operated with excessive noise.

Charges (1) and (2) are, therefore, dismissed.

As to (3): It is undisputed that the defendant's wife helped to tend bar and sold and served liquor at the tavern on October 23 and 30, 1938. The defendant contends that these services by his wife, being without pay and merely to help him, her husband, do not constitute a violation of the Newark regulation which prohibits the employment of females to tend bar or to sell and serve liquor. It has already been ruled to the contrary. Re Haino, Bulletin 295, Item 7.

I find the defendant guilty on charge (3).

As to (4): On Wednesday, November 2, 1938, at 6:00 A.M., Investigators Kane and DiPietro visited the defendant's tavern and kept it under surveillance for about ten minutes. During that time, they observed three men enter the rear door of the building on Komorn Street, one of whom soon came out. They then entered that door and gained admittance into the defendant's kitchen, where they saw one of the men at a table drinking liquor. As they entered, the cash register in the barroom rang and the defendant's porter, an elderly man, soon entered the kitchen and handed some change to the man at the table. The porter thereupon took the investigators' orders for, and served to them, a round of whiskey and soda (at twenty cents the drink) at 6:15, 6:25, and again at 6:30 A.M. He then sold a pint bottle of whiskey to Investigator Kane for seventy cents. All the liquor was obtained from the barroom and all the sales were rung up on the cash register there, but actual delivery of the liquor occurred in the kitchen.

The defendant testified that he employed the porter only to clean up and instructed him never to sell any liquor. The porter testified that, on occasions when no one else was about, he sold to customers, and that the reason for his running the tavern and selling liquor (apparently behind closed doors) before the permissible opening hour on November 2, 1938, was that he was "half under the weather."

The licensee is strictly accountable for the violations of his employees in his liquor establishment. I find the defendant guilty on charge (4).

As to (5): The defendant's application for his present license includes, in description of the premises sought to be licensed, only the barroom, sitting room and cellar but not the kitchen (where the above sales occurred). His previous applications for his 1934-5, 1935-6, 1936-7, 1937-8 licenses included the kitchen as part of the premises to be licensed. The defendant testified that all the applications were prepared for him by the same man; that it was his (the defendant's) intention to have the kitchen included in the present application; that it was omitted through inadvertence.

While I am satisfied that the defendant wanted the application for his present license to include the kitchen, nevertheless, since the application actually fails to include that room, the license issued pursuant thereto covers only the barroom, sitting room and cellar, and consequently the above sales which occurred in the kitchen were outside the scope of the license.

I find the defendant guilty on charge (5).

As to penalty: For the prohibited employment of a female to tend bar and sell and serve liquor at the tavern, viz., the defendant's wife, his license will be suspended for five (5) days; for the sale and service of liquor and, in effect, running the tavern behind closed doors during prohibited hours, his license will be suspended for an additional ten (10) days; and for such sales and service occurring on unlicensed premises, his license will be suspended for an additional five (5) days.

Accordingly, it is, on this 18th day of April, 1939,

ORDERED that plenary retail consumption license C-860, heretofore issued to Abraham Geller by the Municipal Board of Alcoholic Beverage Control of the City of Newark, shall be and the same is hereby suspended for a period of twenty (20) days, commencing April 21, 1939, at 3:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

2. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - BINGO PLAYED IN A BARROOM - 5 DAYS.

In the Matter of Disciplinary)
Proceedings against)

BERTHA MINSKI,)
324 Springfield Ave.,)
Newark, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-47, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)

-----)
E. H. Failor, Esq., Attorney for the State Department of Alcoholic)
Beverage Control.)

Bertha Minski, Pro Se.

BY THE COMMISSIONER:

The defendant is charged with permitting Bingo to be played at her licensed premises in a room where a bar was located, in violation of Rule 16 of State Regulations No. 20.

The undisputed facts, briefly, are as follows: On the evening of February 3, 1939, a Bingo game, attended by 180 people, was held at the defendant's licensed premises in a large hall where an 18-foot bar was located. This bar was used three times a month for the sale and service of liquor on occasions when various organizations met in the hall. During the progress of the Bingo, however, no liquor was displayed at the bar, or sold or served there. But the rule is violated whenever Bingo is played in a barroom.

As I said in Re Bohemian Benevolent & Literary Association,
Bulletin 302, Item 17:

"It is not my function to decide in advance of the courts whether Bingo and these other games of chance constitute a violation of the criminal law. Until such determination is made one way or other I have tolerated it on licensed premises, but only under the strict conditions set forth in the above rule.

"The rule was violated by playing the game in a room in which there was a bar. The fact that the bar was not in use or equipped with liquor at the time is immaterial. It is not within the province of licensees to make self-beneficial exceptions to the rules controlling the conduct of licensed premises. When the privilege is abused licensees will have to learn the lesson that the rules were made to be obeyed."

I find the defendant guilty as charged.

Her license will be suspended for five (5) days.

Accordingly, it is, on this 22nd day of April, 1939, ORDERED, that Plenary Retail Consumption License C-47, heretofore issued to Bertha Minski by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of five (5) days, commencing April 27, 1939, at 3:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

3. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - BINGO PLAYED IN A BARROOM AND ACCOMPANIED BY SOLICITATION VIA THE BUTTER AND EGG ROUTE IN VIOLATION OF SPECIAL RULING.

In the Matter of Disciplinary Proceedings against)

HAROLD KATZEN and)
FRANK BUNTELE,)
52 Holland Street,)
Newark, N. J.,)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption License C-758, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

Samuel B. Helfand, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Harold Katzen and Frank Buntele, Pro Se.

BY THE COMMISSIONER:

The defendants are charged with (1) permitting Bingo to be played at their licensed premises in a room where a bar was located, in violation of Rule 16 of State Regulations No. 20; and (2) permitting "gifts, prizes and inducements" to be given away at the said game of Bingo, contrary to special ruling of the Commissioner.

On Tuesday evening, January 10, 1939, a Bingo was, with the defendants' permission, conducted by Mrs. Florence Du Buque in a large hall at the defendants' licensed premises. Earlier that day, the Commissioner, learning that circulars were distributed announcing Bingo at the defendants' tavern "Every Tuesday Nite!" and advertising free gifts of butter, tea, coffee, sugar and eggs "To The First 50 People!" and also a "Door Prize", and "pennies from heaven", directed a letter to the defendants specifically ordering them "immediately to cease and desist from the advertised practices" of free gifts and a door prize. Re Katzen and Buntele, Bulletin 294, Item 5. The letter further, among other things, warned the defendants that, under Rule 16 of State Regulations No. 20, Bingo could not be played on licensed premises in a room where a bar is located. The letter was personally served on Harold Katzen, one of the defendants, at the licensed premises at 4:30 o'clock on Tuesday afternoon by Investigator Kane of this Department.

As to charge (1): The Bingo which was held that night was attended by Investigator Quinn of this Department. He observed that the hall in which the game was being played contained a bar. The defendants, though claiming that this bar was not complete in its plumbing connections, nevertheless admit that, by the date of the Bingo game, it already had twice been used in the sale and service of draught beer at the taps and hard liquor over the bar.

The defendants, by thus permitting the Bingo on their licensed premises in a room containing a bar, plainly violated Rule 16 of State Regulations No. 20. As I said in Re Bohemian Benevolent & Literary Association, Bulletin 302, Item 17:

"The fact that the bar was not in use or equipped with liquor at the time (of the playing of Bingo) is immaterial. It is not within the province of licensees to make self-beneficial exceptions to the rules controlling the conduct of licensed premises."

Katzen testified, however, that, when Investigator Kane served the Commissioner's letter upon him, he inquired of Kane whether it was permissible to conduct a Bingo game in the hall despite the presence of the "incomplete" bar there, and that Kane replied that such was permissible. Kane, in rebuttal, testified that the conversation which occurred between him and Katzen was as follows:

"...he says, 'We have a counter in the room,' and he says, 'we sometimes used it to serve sandwiches,' and I says, 'Is it equipped as a bar,' and he said, 'No, there is no plumbing, no taps, and it has never been used,' and I said, 'I tell you the answer, as far as the bar, is in the Commissioner's letter,' and I said, 'Any additional information you will have to write to Commissioner Burnett for.'"

There is no reason for doubting the word of Investigator Kane. Even if I accept Mr. Katzen's version, all it amounts to at the most is that he erroneously assumed that Mr. Kane was the Commissioner.

I find the defendants guilty on charge (1).

As to charge (2): Forty persons participated in the Bingo. The first twenty arrivals were given white slips which entitled them, during the course of the evening, to select a number from the

5. ELECTIONS - HORSE RACING AMENDMENT - LICENSED PREMISES - EXTENT TO WHICH LICENSED PREMISES MAY BE USED FOR POLLING PLACE.

Dear Sir:

For the purpose of clarifying ruling with respect to any polling place in use at the Special Election, June 20th next, will you kindly set forth the number of hours said polling places shall remain closed, where a tavern is situated in the same building.

Yours very truly,
Elmer J. Herrmann,
Commissioner of Registration.

April 22, 1939

Elmer J. Herrmann, Commissioner of Registration,
Newark, New Jersey.

My dear Mr. Herrmann:

Where the licensed premises or building, or part thereof, is used as a polling place, no alcoholic beverages may be sold or served at retail on June 20, 1939, between the hours of 12:00 noon and 8:00 P.M., Eastern Standard Time. Furthermore, (1) there may be no bar in the hall or room to be used as the polling place; (2) no alcoholic beverages may be sold, served or consumed upon any part of the licensed premises while the polls are open and until after the votes shall have been counted and tabulated, and the election officers shall have fully completed their duties in respect to the election, and, in any event, during any part of the twenty-four hours of the calendar day on which the election is held.

See Re Kindle, Bulletin 310, Item 10; Re Hofstra, Bulletin Bulletin 197, Item 16.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. PLENARY RETAIL CONSUMPTION LICENSEES - MAY SELL FOR ON-PREMISES CONSUMPTION, OFF-PREMISES CONSUMPTION, EITHER OR BOTH - SPECIAL CONDITION DESIGNED TO LIMIT OFF-PREMISES CONSUMPTION SALES TO INCIDENTAL PART OF BUSINESS, DISAPPROVED.

April 17, 1939

Bertram E. Whitman,
City Clerk,
Atlantic City, N. J.

My dear Mr. Whitman:

I have before me resolution adopted by the Board of Commissioners on April 6, 1939, authorizing the transfer of plenary retail consumption license issued to George Burton from 722 Arctic Avenue to 722-24 Arctic Avenue, Atlantic City, subject to the special condition that:

"The business to be pursued by the said George Burton will be mainly for the sale and consumption of alcoholic beverages on the premises and the sale of package goods shall at no time be permitted to be anything more than a mere incident to the same. The door at 724 Arctic Avenue will at all times be closed and will not be used to permit customers or patrons to enter and leave the licensed premises."

I note that the condition was imposed by the Board as a result of objection, on the part of plenary retail distribution licensees, that Mr. Burton intended to use the new premises principally for package goods business.

Mr. Burton may confine his business to sales for on-premises consumption, of his own volition, if he wishes. But the special condition, in so far as it requires the business to be mainly for the sale of alcoholic beverages for on-premises consumption, for the reasons stated in Re Lee, Bulletin 232, Item 8, is disapproved. Municipal regulations may not diminish the statutory privileges conferred upon plenary retail consumption licensees to sell for on-premises consumption, off-premises consumption, either or both. Re Altman, Bulletin 248, Item 8. These privileges may be exercised, one or the other or both, at the option of the licensee. Re Salomon, Bulletin 159, Item 6; Re Boyce, Bulletin 183, Item 5.

I take it that the latter part of the condition requiring the door at 724 Arctic Avenue to be closed to the public at all times, was designed to further the limitation on the conduct of the package goods business. With this understanding, the second part of the condition is also disapproved. Should there be other and valid reasons for its imposition, and you will set them out for me, I shall be glad to give it further consideration.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

7. LICENSES - EXTENSION TO TRUSTEE IN BANKRUPTCY - NO RIGHT IN CREDITOR OF LICENSEE TO INSIST THAT TRUSTEE TAKE STEPS TO OBTAIN SUCH EXTENSION.

Dear Sir:

If a licensee of a tavern files a petition in bankruptcy, may one of the creditors insist that the license be turned over to the trustee in bankruptcy,

Respectfully yours,
Aristo Dallavalle.

April 22, 1939

Aristo Dallavalle, Esq.,
Newark, N. J.

Dear Sir:

Under the provisions of R. S. 33:1-26 (Control Act, Section 23), a trustee in bankruptcy may apply to the issuing authority for an extension of the bankrupt's liquor license for a limited time not exceeding its term. If such extension is granted, the trustee thereafter succeeds to the rights of the bankrupt in and to the license.

In view of the provisions in the same Section that "under no circumstances, however, shall a license or rights thereunder be deemed property", nothing passes to the trustee unless and until such extension is granted. It follows that a creditor of the bankrupt, so far as the Control Act is concerned, has no standing whatsoever in respect to the license.

No opinion is expressed as to the right of creditors to insist in the bankruptcy proceedings that the trustee take steps to obtain such extension.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

8. SPECIAL PERMITS - SERVICE OF BEER FREE OF CHARGE TO PARADING COOTIES - NO PERMIT REQUIRED.

Dear Sir:

On behalf of the Military Order of Cooties of Hudson County, kindly advise so we may order refreshments.

On April 30, 1939, we will have 300 to 400 uniformed Cooties take part in the Americanization Day Parade sponsored by the V.F.W. of Hudson County. These visitors come from New York, Pennsylvania and New Jersey.

The local "Pup Tent" in such demonstrations must entertain the visitors with food and refreshments after the parade. There is no admission charge to the visitors and friends.

Sincerely,
Roderich Burke,
Chairman, Americanization Day
Committee.

April 24, 1939

Mr. Roderich Burke, Chairman,
Americanization Day Committee,
North Bergen, N. J.

My dear Mr. Burke:

If all that is involved is that the V. F. W. will buy out of general treasury funds the liquid refreshments or cootie chastener, and serve it free of any charge, no permit will be necessary. Of course, keep the kids out of the canteen and the beverages separate from the kerosene and larkspur.

A parading Cootie deserves more than a beer - at least, a Swiss itch! I hope you all have a swell time.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

9. DISCIPLINARY PROCEEDINGS - FRAUD - FALSE STATEMENTS AND SUPPRESSION OF MATERIAL FACTS IN SECURING A LICENSE - REVOCATION INDICATED AND EFFECTED.

April 24, 1939

Arthur V. Conover,
Manalapan Township Clerk,
Freehold, R. D. 3, N. J.

My dear Mr. Conover:

I have before me staff report and your letter of April 3rd re disciplinary proceedings conducted by the Township Committee against Henry Retmanski, Freehold-Englishtown Road, Tennent, charged with obtaining a license as a front for a person disqualified by non-residence, and note that his license was revoked outright.

The application for transfer in answer to Question 28 stated that no person other than Retmanski had an interest in the license applied for or in the business to be conducted. So far from being the truth it now appears that both Trojnacki and Retmanski have admitted that all of the money advanced to secure the transfer and to operate the business was furnished by Matthew Trojnacki and that Retmanski has no financial interest in the licensed business whatsoever.

Please express to the members of the Township Committee my thanks for the conduct of these proceedings and the befitting penalty of revocation for the fraud practiced.

Fearless administration of the liquor law commands respect. The Township Committee had done its duty well.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against PHILIP JASKULSKI, 1400 Rose Street, Camden, N. J., Holder of Plenary Retail Consumption License No. C-107, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

CONCLUSIONS AND ORDER

Philip Jaskulski, Pro Se.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleads guilty with an explanation to a charge alleging that, on January 13, 1939, he sold a pint bottle of Wilson "That's All" Whiskey below the minimum retail price, in violation of State Regulations No. 30.

On January 13, 1939, Investigators Lockwood and Sullivan, of this Department, visited the licensed premises. Investigator Lockwood asked the licensee's wife, who was in charge of the premises, for a pint bottle of Wilson "That's All." After placing the bottle on the bar, she said that she would have to ask her husband the price. She went to a rear room, returned to the bar, told the investigators that the price was \$1.15 and sold the item to the investigators for \$1.15. The Fair Trade price is \$1.16. The licensee's wife then told Investigator Lockwood that the only reason she could account for selling it at \$1.15 was the fact that, instead of exacting the last penny or extra cent, she would say it is all right.

The licensee testified that his wife very seldom sells any liquor; that, when she came to the rear room, he told her that the price was \$1.16 and that he does not know what happened thereafter. Investigator Sullivan heard the conversation between the licensee and his wife, and heard the licensee tell his wife that the price was \$1.16.

The licensee is responsible for the acts of his agents, and penny "chiseling" is no different in principle from cheating in dimes or dollars. Re Revallo, Bulletin 303, Item 2.

In fixing a penalty I am taking into consideration the fact that this is not the ordinary type of case in which the licensee alleges that a sale was made below the minimum retail price contrary to his instructions. In such cases there is always a grave doubt as to whether such instructions were given and, even if said instructions were given, the licensee would not be absolved from responsibility solely by reason of the fact that he had issued said instructions. In the instant case, however, it appears that the licensee was making a real effort to comply with the regulations to the extent of marking the proper price upon the bottle and advising his wife as to the price at which the item should be sold. While the licensee must be held responsible for the violation, even where it appears that the agent deliberately violated his instructions, I feel that there are mitigating circumstances in this case. I shall, therefore, suspend the license for five days instead of the usual ten days. It would be well if the wife of the licensee gave heed to the thought that the law was made to be obeyed before thinking of becoming generous with her husband's customers.

Accordingly, it is, on this 22nd day of April, 1939,

ORDERED, that Plenary Retail Consumption License No. C-107, heretofore issued to Philip Jaskulski by the Municipal Board of Alcoholic Beverage Control of the City of Camden, be and the same is hereby suspended for a period of five (5) days.

Pursuant to notice of December 17, 1938, Bulletin 289, Item 1, the effective date of such suspension is reserved for future determination.

D. FREDERICK BURNETT,
Commissioner.

11. APPELLATE DECISIONS - ALPER v. PATERSON ET AL.

REBECCA ALPER,)
)
 Appellant,)
)
 -vs-)
)
 BOARD OF ALDERMEN OF THE CITY)
 OF PATERSON, ISAAC HAIDAK and)
 MICHAEL DeLUCCIA,)
)
 Respondents)

ON APPEAL
CONCLUSIONS

E. Robert Coven, Esq., by Harry Smith, Esq., Attorney for Appellant.
 Salvatore D. Viviano, Esq., Attorney for Respondent Board of
 Aldermen of the City of Paterson.
 Joseph J. DeLuccia, Esq., Attorney for Licensee, Michael DeLuccia.

BY THE COMMISSIONER:

Appellant appeals from the action of respondent Board of Aldermen in granting the transfer of plenary retail consumption license No. C-377 from person to person and place to place, namely, from Isaac Haidak to the partnership consisting of Michael DeLuccia and Isaac Haidak and from 120 - 20th Avenue to 33 Ellison Street, Paterson.

Appellant contends that said transfer was improper because Isaac Haidak had previously executed an assignment of said license to her and consented to said transfer.

In July 1938 Isaac Haidak was granted License No. C-377 for premises 120 - 20th Avenue, Paterson, which are owned by appellant. He testified that, at that time, he visited the office of an attorney, who is appellant's son-in-law, and signed an agreement not to transfer the license to other premises. That agreement was not produced at the hearing. Haidak thereafter operated his business under said license until the latter part of November 1938, when he closed. On December 10, 1938 he again visited the attorney's office, obtained a substantial reduction of rent and executed two papers: (1) a purported assignment of License No. C-377 to Rebecca Alper, containing a power of attorney, and (2) a consent to said transfer addressed to the Paterson Board of Aldermen. Thereafter Haidak resumed business and continued to operate until after January 1, 1939, when he again closed. Later in the month of January 1939 he entered into negotiations with Michael DeLuccia, as a result of which, on February 8, 1939, an application was filed with the Board of Aldermen for the transfer from Haidak to the partnership composed of DeLuccia and Haidak and also from 120 - 20th Avenue to 33 Ellison Street. The transfer was granted despite the objection of Rebecca Alper. Hence this appeal.

It appears from the testimony that Rebecca Alper has never made an application to the Board of Aldermen to transfer the license to her pursuant to the purported assignment and the consent dated December 10, 1938.

I find as a fact that the documents dated December 10, 1938 were executed pursuant to an attempt by the landlord to prevent her tenant from transferring the license to other premises. Such an

agreement is void. The purpose of the Legislature is clear that licensees should hold their licenses free from any device which would subject the licenses to control of other persons. Walsh v. Bradley, 121 N. J. Eq. 359.

It follows that the existence of the void instruments was not a sufficient reason for denying the transfer.

Appellant contends also that the transfer should have been denied because DeLuccia is disqualified from holding a license. In answer to Question 29 in the application filed, it is set forth that Michael DeLuccia pleaded guilty in 1928 to a charge of conducting a disorderly house and was fined \$1,000.00. The police report attached to the application shows that Mike DeLuccia was arrested on charges of violating the Prohibition Act and maintaining a disorderly house and that, on November 24, 1932, the disorderly house complaint was withdrawn. At the hearing DeLuccia testified that in fact he was convicted for violating the Prohibition Act but not for maintaining a disorderly house; that, in answering Question 29, he gave the date as 1928 because he was arrested in that year but not convicted until 1932; that, at the time of his arrest, he was a bartender in a hotel where liquor was sold in violation of the Prohibition Act. DeLuccia further testified that all of these facts were made known to the Board of Aldermen. Apparently the Board decided that DeLuccia was not disqualified by reason of this conviction and, on the facts presented, it does not appear that this determination was unreasonable.

For these reasons, the action of respondent Board of Aldermen, in granting the transfer referred to herein, is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: April 23, 1939.

12. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - SUNDAY SALES BEFORE NOON.

In the Matter of Disciplinary Proceedings against
JOSEPH INFANTOLINO,
6 - 19th Avenue,
Newark, N. J.,
Holder of Plenary Retail Consumption License C-599, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS
AND ORDER

E. H. Failor, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Joseph Infantolino, Pro Se.

BY THE COMMISSIONER:

The defendant pleaded non vult to the charges of selling and serving liquor at his tavern, and having his tavern open, before noon on Sunday, March 12, 1939, in violation of Newark Ordinance #3930.

The defendant's license will be suspended for five (5) days for selling and serving liquor before the Sunday opening hour, and for an additional five (5) days for having his tavern open before that hour. However, since this is the defendant's first offense of record and since he frankly pleaded guilty, without alibi, five (5) days will be remitted from his penalty, leaving a net suspension of five (5) days.

Accordingly, it is, on this 23rd day of April, 1939, ORDERED, that Plenary Retail Consumption License C-599, heretofore issued to Joseph Infantolino by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of five (5) days, commencing April 27, 1939, at 3:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

13. LICENSES - EXTENSION TO TRUSTEE IN BANKRUPTCY - NO OBJECTION TO TRANSFER OF BANKRUPT'S LICENSE IF TRUSTEE HAS HAD A REASONABLE TIME TO APPLY FOR EXTENSION AND FAILED TO DO SO, OR HAS ABANDONED HIS "RIGHT" TO APPLY.

April 21, 1939.

Paul W. Ewing, Esq.,
City Attorney,
New Brunswick, N. J.

Dear Mr. Ewing:

I have your letter of April 11th, stating that Joseph Gross, trading as "Gross Liquor Store" at 115 Albany Street, New Brunswick, holder of a plenary retail distribution license, was adjudicated a bankrupt in involuntary proceedings "some months ago" and has been regularly discharged in bankruptcy, and asking whether there is any reason why, because of the bankruptcy, an application to transfer his license to Bessie R. Gross should be denied.

Your letter also states, and the records of this Department verify, that Gross' license is still outstanding in his own name.

When a retail licensee is adjudicated a bankrupt, the trustee in bankruptcy may, under R. S. 33:1-26, apply for an immediate extension of the bankrupt's license in his own name as trustee. However, until the trustee obtains such an extension, the license, representing a personal privilege entrusted to the licensee, does not automatically pass to the trustee. Were it to pass automatically, there would be no need for the provision in R.S.33:1-25 which authorizes an extension of a bankrupt's license in the name of the trustee.

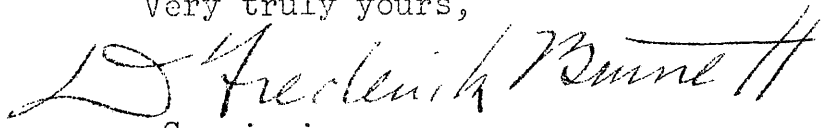
Hence, the license, until extended to the trustee, belongs to the bankrupt and application may be made to the issuing authority for a regular transfer of his license to another person.

However, an issuing authority, before acting on any application for a person-to-person transfer of a bankrupt's license, should allow the trustee a reasonable time after the adjudication in bankruptcy to apply for an extension of the license in his own name.

If, in Gross' case, the New Brunswick Board of Commissioners is satisfied that the trustee has had a reasonable time to apply for the extension and has failed to do so, or that he has abandoned his "right" to the extension, it may grant an application for transfer of the license from Joseph Gross to Bessie R. Gross, provided, of course, that the formal requisites of an application for transfer (such as filing of application, posting of fee, advertisement of notice of intention, written consent of the licensee, etc.) are complied with and provided, further, that the Board deems the transfer in all other respects to be proper.

Perchance, this matter may come before me on appeal. Hence, this letter is not intended to express, nor do I at this time entertain, any opinion as to the merits of the application for transfer.

Very truly yours,


Commissioner.

P.S. April 22, 1939 - Since dictating the foregoing, I have just received letter from Edward Schwartz, Trustee in Bankruptcy of Joseph Gross, declaring that he has no interest in the liquor license of Joseph Gross; never took physical possession of same; nor conveyed it by Bill of Sale to Abraham Luskind (whoever he is), nor sold it to anyone else; that his letter is sent in an endeavor to assist Mr. Gross in making whatever disposition he may desire of the license.

This letter clears the whole situation and operates as an abandonment of any claim on the part of the Trustee to an extension.

So far, therefore, as concerns legal power, the transfer may be granted.

