

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

BULLETIN 507

MAY 8, 1942.

1. CANCELLATION PROCEEDINGS - THE CRIME OF LARCENY INVOLVES MORAL TURPITUDE - DEFENDANT CONVICTED IN 1934 OF A CRIME INVOLVING MORAL TURPITUDE (WIRE TAPPING) - CURRENT LICENSE WAS ISSUED IN VIOLATION OF R. S. 33:1-25 - LICENSE ORDERED CANCELLED.

RECONSIDERATION - NOT PERMISSIBLE AFTER DENIAL OF APPLICATION FOR A LICENSE - ISSUING AUTHORITY LOSES JURISDICTION AFTER FINAL DETERMINATION.

IN THE ABSENCE OF APPEAL QUAERE AS TO WHETHER CANCELLATION PROCEEDINGS SHOULD BE SUSTAINED WHERE LICENSE HAS BEEN GRANTED AFTER RECONSIDERATION BY ISSUING AUTHORITY.

In the Matter of Cancellation )  
and Disciplinary Proceedings )  
against )

JOHN PLATNER, )  
607 Columbus Street, )  
Burlington, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-12, issued by the )  
Common Council of the City of )  
Burlington. )  
----- )

John J. Meehan, Esq., Attorney for Defendant-Licensee.  
G. George Addonizio, Esq., Attorney for State Department of  
Alcoholic Beverage Control.

BY THE COMMISSIONER:

Notice was served upon the defendant to show cause why his license should not be cancelled on the grounds that:

- (1) He had been disqualified from obtaining such license by reason of his conviction in 1934 for a crime involving moral turpitude - viz., "wire-tapping." See R. S. 33:1-25.
- (2) The Burlington City Council, having first denied the application for such license, exceeded its powers in later reconsidering and granting that self-same application.

Contemporaneously, a disciplinary charge was also served upon the defendant to suspend or revoke his license on the ground that; in his respective applications for license for the last four years, he had suppressed the fact of the wire-tapping conviction in 1934, thus violating R. S. 33:1-25.

The defendant contests the entire proceedings, both cancellation and disciplinary.

As to the cancellation grounds: The defendant has a criminal record which extends back to 1924. His last conviction occurred in 1934, when he pleaded guilty to the crime of "wire-tapping" (R. S. 2:145-13, 14) and was fined \$75.00.

As to this crime, which is the only one urged in the cancellation proceedings, the testimony shows that the defendant had apparently tapped two electric meters, one at his home and another at his tavern, and thus over a period of several months "stole" some \$50.00 worth of electricity.

Although the defendant claims that an itinerant salesman of electric light bulbs tapped these meters in the defendant's presence but without the defendant quite knowing what he was doing, I put no stock in such an absurd story. Moreover, the defendant may not, in this proceeding, collaterally attack his own confessional plea or the merits of his conviction in the criminal court. See Re Case 173, Bulletin 504, Item 7, and cases there cited.

It is well settled that such crimes as larceny, embezzlement and receiving stolen goods are crimes which, by their very nature, ordinarily involve moral turpitude. See Re Case 136, Bulletin 448, Item 3, and cases there cited (embezzlement); Re Case 138, Bulletin 451, Item 8, and cases there cited (larceny and receiving); Re Case 173, supra (receiving).

By parity of reasoning, the analogous crime of "stealing" a substantial quantity of electric current by tapping or tinkering with the meter must likewise be viewed as ordinarily involving such element of turpitude. In the present case, which deals with the tapping of two such meters, the facts, so far as they may be gleaned, confirm rather than rebut the presence of that element.

Hence I find that, even aside from the rest of the defendant's criminal record, his conviction in 1934 was for a crime involving moral turpitude and that his current license was, therefore, issued to him in violation of R. S. 33:1-25.

The license thus being subject to cancellation on this ground, there is no need to determine whether it is also subject to cancellation on the "reconsideration" ground. However, it is clear that the Burlington City Council, having originally denied the defendant's application for his current license, acted improperly in reconsidering and granting that application at a subsequent meeting. An issuing authority, once denying a particular application, loses jurisdiction to reconsider that self-same application. For the leading case see Plagen v. Atlantic City et al., Bulletin 80, Item 11. On the question whether or not such a defect may be collaterally attacked, see Re West New York, Bulletin 166, Item 9.

As to the disciplinary charge: In his various license applications in question, the defendant revealed only part of his criminal record, the said 1934 conviction for wire-tapping being one of the convictions which he failed to disclose. Although this 1934 conviction was eventually noted in the defendant's last application, such notation was made by his attorney (and apparently without the defendant's knowledge) after the application had already been filed, considered and denied and while it was awaiting reconsideration.

The defendant's claim that he did not know he was required to disclose all his convictions is, similar to much of his testimony in the case, sheer fiction.

Hence I find the defendant guilty as charged.

I note that the defendant has a past record of suspension of his license, viz., by the local issuing authority in October 1941,



"1. In your applications for license dated December 26, 1940 and June 6, 1941, filed with the Board of Alcoholic Beverage Control of the City of Paterson, upon which Plenary Retail Consumption License C-209 for the year 1940-41 was transferred to you and C-209 for the year 1941-42 was granted to you, you falsely stated 'No' in answer to Question 28 in said applications, 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 Salvatore Mania was so interested in that he was the real and sole owner of the licensed business; said false statements being in violation of R.S. 33:1-25.

"2. From on or about January 8, 1941 and until the present time, you knowingly aided and abetted Salvatore Mania, a non-licensee, to exercise the rights and privileges of your license contrary to R. S. 33:1-26, in violation of R. S. 33:1-52.

"3. From on or about May 24, 1937 and until January 8, 1941, Settimo Mania, your predecessor in interest from whom your license was transferred, knowingly aided and abetted Salvatore Mania, 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."

Salvatore Mania is the husband of Rose Mania. He was born in Italy. In 1913 he came to the United States, and between 1920 and 1937 he served various enlistments in the United States Navy. At the time of his last discharge from naval service, in May 1937, he arranged to purchase the licensed business then conducted by Mrs. Charles Laux at 403 Straight Street, Paterson. He testified herein that he then believed he had become a citizen of this country because of his lengthy service in the Navy. However, he consulted an attorney who advised him that he was not a citizen and that he was ineligible to hold a liquor license in this State. As a result of this advice, Salvatore Mania arranged to have the liquor license for the premises in question transferred from Mrs. Charles Laux to his uncle, Settimo Mania. The license was subsequently renewed from year to year in the name of Settimo Mania until January 8, 1941, when it was transferred to Rose Mania. She renewed the license for the present fiscal year.

It is admitted that, at all times since May 1937, Salvatore Mania had an undisclosed interest in the various licenses and the business conducted thereunder.

On January 23, 1941 Salvatore Mania became a citizen of the United States. Apparently, he is now fully qualified to hold a liquor license. On April 22, 1942, after the hearing herein, License C-209 was duly transferred from Rose Mania to Rose Mania and Salvatore Mania, subject to these proceedings. I am satisfied, therefore, that the unlawful situation has now been corrected.

As to penalty: While the advice given by the attorney, that Salvatore Mania was then ineligible to hold a liquor license, was erroneous because of the then existing treaty between Italy and the United States, nevertheless, because of the termination of that treaty, Salvatore Mania was ineligible to hold a liquor license in this State between March 15, 1939 and January 23, 1941, the date he

became a citizen. Re Woertendyke, Bulletin 304, Item 8. Hence this case is distinguished from Re Waldman, Bulletin 404, Item 11, and Re Mascolo, Bulletin 427, Item 7, in both of which cases it appeared that the husband was fully qualified to hold a license. In this case, the true owner was disqualified during part of the time the license was held in the name of his uncle or his wife. Moreover, it is admitted that, in both applications referred to in the charges, Rose Mania falsely answered Question 28. In view of the guilty plea herein and the correction of the unlawful situation, I shall impose the usual ten-day penalty.

Accordingly, it is, on this 30th day of April, 1942,

ORDERED, that Plenary Retail Consumption License C-209, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Rose Mania for premises at 403 Straight Street, Paterson, and transferred during the pendency of these proceedings to Rose Mania and Salvatore Mania, for same address, be and the same is hereby suspended for a period of ten (10) days, commencing May 5, 1942, at 3:00 A.M., and terminating at 3:00 A.M. on May 15, 1942.

ALFRED E. DRISCOLL,  
Commissioner.

- 3. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENT IN LICENSE APPLICATION - AIDING AND ABETTING A NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - PERMITTING KNOWN PROSTITUTES ON LICENSED PREMISES - ALLOWING LEWDNESS AND IMMORAL ACTIVITY ON LICENSED PREMISES - HOSTESSES - EMPLOYMENT OF DISQUALIFIED PERSONS - POSSESSION OF ILLICIT ALCOHOLIC BEVERAGES - REFILLING - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against )

RUSSELL PALMERI, )  
111 Prospect Avenue, )  
Asbury Park, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-66, issued by the City Council of the City of Asbury Park. )

No Appearance on behalf of the Defendant-Licensee.  
Richard E. Silberman, Esq., Attorney for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant, holder of a plenary retail consumption license in Asbury Park, has been served with the following charges:

"1. In your license application dated July 3, 1941 filed with the City Council of the City of Asbury Park, upon which Plenary Retail Consumption License C-66 for the current year was granted to you, you falsely stated 'No' in answer to Question 28 therein, which asks, 'Has any individual....other than the applicant, any interest directly or indirectly in the license applied for or in the business to be conducted under said license?', whereas in truth and fact Mary Vacchiano

was the real and beneficial owner of said licensed business and had such an interest; said false statement being in violation of R. S. 33:1-25.

"2. From on or about July 17, 1941 and until the present time, you knowingly aided and abetted Mary Vacchiano, a non-licensee, to exercise the rights and privileges of your license contrary to R. S. 33:1-26, in violation of R. S. 33:1-52.

"3. On or about September 19 and 20, 1941, you allowed, permitted and suffered known prostitutes in and upon your licensed premises, in violation of Rule 4 of State Regulations No. 20.

"4. On or about the dates last aforesaid you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises in that you procured females for the purpose of prostitution and allowed females to solicit male customers in your licensed premises for immoral purposes, in violation of Rule 5 of State Regulations No. 20.

"5. On or about the dates aforesaid you allowed, permitted and suffered females employed in your licensed premises to accept beverages at the expense of and as gifts from customers and patrons, in violation of Rule 22 of State Regulations No. 20.

"6. On or about March 16, 1942 and on divers days prior thereto, you knowingly employed and had connected with you in a business capacity Thomas Davis, a person who would fail to qualify as a licensee by reason of the fact that he suffered revocation of a liquor license issued to him, within two years prior to his said employment; said employment being in violation of R. S. 33:1-26.

"7. On or about the dates last aforesaid you allowed, permitted and suffered in and upon your licensed premises Mary Vacchiano, a known criminal and person of ill repute, in violation of Rule 4 of State Regulations No. 20.

"8. On or about March 11, 1942 you possessed an illicit alcoholic beverage in that one quart bottle labeled 'Wilson "That's All" Blended Whiskey', found in your licensed premises, contained an alcoholic beverage which varied from genuine samples used for comparative purposes in proof, and color and solid content, in violation of R. S. 33:1-50.

"9. On or about the date last aforesaid and prior thereto, you, not being the holder of a brewery, distillery, winery or rectifier's license, bottled an alcoholic beverage for sale and resale in that you refilled a one quart bottle labeled 'Wilson "That's All" Blended Whiskey' with other whiskey, in violation of R. S. 33:1-78."

In view of the defendant's failure to appear at the hearing in the case, it is pointless to detail the evidence which the Department produced at that hearing. Suffice it to say that such uncontested evidence shows that the defendant has been holding his license

merely as a "front" for his married sister, Mary Vacchiano, and perhaps also for her husband, Sam Vacchiano; and that all the other numerous and serious violations, showing that the tavern was being conducted in a disreputable and offensive way, actually occurred as charged.

Hence I find the defendant guilty on all charges.

The only proper penalty, clearly, is outright revocation of the license.

It is well to further point out that the Vacchianos previously operated a tavern two doors from the premises in question under the guise of an employee, Thomas Davis, who held the license as a "front" for them; that, when such license was revoked by this Department in 1941 because of that "front" and other violations (Re Davis, Bulletin 469, Item 9), the Vacchianos, in utter disregard for law, merely concocted the present "front."

If I again catch the Vacchianos, who are apparently totally unfit to engage in the liquor business, resorting to any further "front" in an effort to participate in that business, I shall refer the matter to the County Prosecutor for criminal prosecution.

Accordingly, it is, on this 1st day of May, 1942,

ORDERED, that Plenary Retail Consumption License C-66, heretofore issued to Russell Palmeri by the City Council of the City of Asbury Park, for premises 111 Prospect Avenue, Asbury Park, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL,  
Commissioner.

4. APPELLATE DECISIONS - KRUMP v. TOWNSHIP OF CALDWELL.

ANTON KRUMP, )

Appellant, )

-vs- )

ON APPEAL  
CONCLUSIONS AND ORDER

TOWNSHIP COMMITTEE OF THE )  
TOWNSHIP OF CALDWELL, )

Respondent. )  
- - - - - )

Leroy J. D'Aloia, Esq., Attorney for Appellant.  
Robert Shaw, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the revocation of Plenary Retail Consumption License C-13 for premises located on Passaic Avenue, Township of Caldwell. On April 9, 1942 respondent revoked appellant's license after it had found him guilty, among other things, of allowing, permitting and suffering in and upon his licensed premises the performance and public exhibition of acts of open lewdness in violation of Rule 5 of State Regulations No. 20.

Appellant alleges herein (1) that the penalty was too severe, (2) that there was insufficient proof that the acts of immoral conduct took place upon the licensed premises, and (3) that there was no knowledge or acquiescence on the part of appellant that acts of lewdness and acts of indecent and immoral conduct were taking place upon his premises.

It was stipulated at the hearing herein that on the evening of March 16, 1942 a smoker was conducted in a closed pavilion located on a large tract of land owned by appellant, and that, during the smoker, a filthy and disgusting exhibition was given by girl entertainers in the presence of a large crowd of men.

As to (1): Unless this performance took place off the licensed premises or without the knowledge or acquiescence of appellant or his agents, the penalty of revocation was not too severe. Pallie v. Caldwell, Bulletin 191, Item 1; McCracken v. Caldwell, Bulletin 456, Item 3.

As to (2): Appellant is the owner of a tract of land containing three and one-half acres, facing on Passaic Avenue. The plot of ground contains a one and one-half story frame building, located near the avenue and in which is located the barroom and restaurant. The pavilion previously referred to is located near the rear of said tract of land, a distance of two hundred and fifty-three feet from the barroom. The pavilion also contains a small bar. The following questions and answers appear in the application for license:

"Describe building containing licensed premises in detail:

- (a) Type of construction - frame
- (b) For what purpose used - dance hall, tavern, restaurant.

"Specify what grounds, if any, adjacent to the above premises will be part of the licensed premises where alcoholic beverages may be sold, served, or stored -- outdoor tables and covered shelter immediately adjoining the licensed building."

It is argued that there is no covered shelter immediately adjoining the licensed building, and hence that the pavilion is not part of the licensed premises. However, appellant testified as follows:

"Q Mr. Krump, when you made your application for a license you requested that a covered shelter on your property be included in the licensed premises, did you not?

A I was holding picnics in the back.

Q These picnics were held in this covered shelter and alcoholic beverages were served there?

A That is right.

Q And you wanted a license for that particular building so you could run your bar in there?

A Yes.

Q And for some time before March 16th you had used that building to serve alcoholic beverages?

"A Couple of times, yes.

Q So there is no question that this building was intended by you to be part of your licensed premises?

A That is right.

Q And that is why in your application you requested that your license be extended to the covered shelter?

A That is right.

Q And it was in this covered shelter that this meeting took place?

A Yes."

The Chief of Police of Caldwell Township also testified that during the past five years alcoholic beverages were regularly served at the pavilion.

Now, it is true that the description of the licensed premises, as set forth in the application, is very material in determining the exact extent of the premises sought to be licensed. Where, as in this case, the description in the application is ambiguous, I think it is proper to look to the intent of the applicant. A licensee may not enjoy all the privileges conferred by his license and disclaim all the responsibilities. Lackowitz v. Waterford, Bulletin 426, Item 8. I am satisfied from the evidence that the performance took place upon the licensed premises.

As to (3): The man who conducted the affair held in the pavilion testified that on March 9, 1942 he carried on negotiations with Mrs. Krump, the wife of the licensee, for the hiring of the pavilion. He testified that he told Mrs. Krump he intended to run a smoker for the "boys from the plant" and that when he protested that a rental fee of \$50.00 was too much, she answered "look at the risk we are taking." As a result of this conversation, the man paid a \$5.00 deposit until Mrs. Krump had an opportunity to speak to her husband. Thereafter, the man returned and arranged with Mr. Krump to hire the pavilion for \$25.00.

On the evening of March 16th the "boys from the plant" and the girl entertainers were present in the front barroom when the announcement was made, in the presence of the licensee, that the entertainment was about to begin in the pavilion. The licensee's bartender was later sent to the pavilion by the licensee himself for the purpose of tapping a keg of beer and was present in the pavilion when the police raided the premises. Great stress is laid upon the admitted fact that the man who arranged the affair never told the licensee or his wife that he intended to run a lewd show. However, it is common knowledge that the term "smoker" is very generally applied to the type of performance conducted at the pavilion. The licensee's wife evidently knew the meaning of the term when she pointed to the risk which they took.

From all the surrounding circumstances, I am satisfied that the licensee and his agents knew of and acquiesced in the acts of lewdness and acts of indecent and immoral conduct which took place upon his licensed premises.

For the reasons aforesaid, the action of respondent is affirmed.

Accordingly, it is, on this 1st day of May, 1942,

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

ALFRED E. DRISCOLL,  
Commissioner.

5. ACTIVITY REPORT FOR APRIL, 1942

To: Alfred E. Driscoll, Commissioner

|                  |   |                          |          |
|------------------|---|--------------------------|----------|
| <u>ARRESTS:</u>  | Licensees and employees - - - - 5                                 | Bootleggers - - - - - 21 |          |
|                  | Total number of persons arrested- - - - -                         |                          | 26       |
| <u>SEIZURES:</u> | Stills - 1 to 50 gallons daily capacity - - - - -                 | 0                        |          |
|                  | 50 gallons and more daily capacity- - - - -                       | 1                        |          |
|                  | Total number of stills seized - - - - -                           |                          | 1        |
|                  | Mash - gallons- - - - -   |                          | 750      |
|                  | Motor vehicles - Trucks - - - - -                                 | 1                        |          |
|                  | Passenger cars - - - - -  | 2                        |          |
|                  | Total number of motor vehicles seized - - - - -                   |                          | 3        |
|                  | Beverage alcohol - gallons- - - - -                               |                          | 135.47   |
|                  | Brewed malt alcoholic beverages (beer, ale, etc.) - gallons - - - |                          | 20.30    |
|                  | Wine - gallons- - - - -   |                          | 1,064.07 |
|                  | Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons - |                          | 0        |

RETAIL LICENSEES:

|  |                                    |  |        |
|--|------------------------------------|--|--------|
| Number of premises in which were found:                        |                                    |  |        |
| Illicit (bootleg) liquor- - 3                                  | "Fronts" (concealed ownership)- 8  |  |        |
| Gambling devices- - - - 3                                      | Improper beer tap markers - - - 1  |  |        |
| Prohibited signs- - - - 3                                      | Stock disposal permits necessary 7 |  |        |
| Unqualified employees - - 102                                  | Other types of violations - - - 11 |  |        |
| Total number of premises where violations were found - - - - - |                                    |  | 136    |
| Total number of premises inspected - - - - -                   |                                    |  | 1,863  |
| Total number of unqualified employees found- - - - -           |                                    |  | 127    |
| Total number of bottles gauged - - - - -                       |                                    |  | 15,192 |

STATE LICENSEES:

|  |    |
|--|----|
| Premises inspected - - - - -               | 62 |
| License applications investigated- - - - - | 10 |

COMPLAINTS:

|  |     |
|--|-----|
| Investigated, reviewed and closed- - - - -         | 339 |
| Investigation assigned, not yet completed- - - - - | 591 |

LABORATORY:

|  |     |
|--|-----|
| Analyses made- - - - -   | 134 |
| "Shake-up" cases (alcohol, water and artificial coloring)- - - - | 15  |
| Liquor found to be not genuine as labeled- - - - -               | 4   |

IDENTIFICATION BUREAU:

|  |     |
|--|-----|
| Criminal fingerprint identifications made- - - - -               | 36  |
| Persons fingerprinted for non-criminal purposes- - - - -         | 107 |
| Identification contacts with other enforcement agencies- - - -   | 114 |
| Motor vehicle identifications via N.J. State Police Teletype - - | 3   |

DISCIPLINARY PROCEEDINGS:

|  |    |
|--|----|
| Cases transmitted to municipalities- - - - - | 28 |
| Cases instituted at Department - - - - -     | 45 |

HEARINGS HELD AT DEPARTMENT:

|   |                           |    |
|---|---------------------------|----|
| Appeals - - - - - 6                     | Tax revocations - - - - 3 |    |
| Disciplinary proceedings- - - 24        | Seizures- - - - - 2       |    |
| Eligibility - - - - - 16                |                           |    |
| Total number of hearings held - - - - - |                           | 51 |

PERMITS ISSUED:

|   |     |     |
|---|-----|-----|
| Unqualified employees - - - - -           | 461 |     |
| Solicitors- - - - -                       | 98  |     |
| Social affairs- - - - -                   | 213 |     |
| Home manufacture of wine- - - - -         | 5   |     |
| Disposal of alcoholic beverages - - - - - | 60  |     |
| Miscellaneous permits - - - - -           | 161 |     |
| Total number of permits issued- - - - -   |     | 998 |

Respectfully submitted,  
 E. W. GARRETT,  
 Chief Deputy Commissioner.

6. GENERAL MAXIMUM PRICE REGULATION - POLICY AND PRACTICE OF THE STATE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL WITH RESPECT THERETO.

INTEGRATION OF REGULATIONS NOS. 30 AND 34 WITH OPA REGULATION - NEW FILING INDICATED - REQUIRED FIVE-DAY WAITING PERIOD MODIFIED IN THIS INSTANCE.

VIOLATION OF OPA REGULATION IS GROUND FOR SUSPENSION OF LICENSE.

TO ALL MEMBERS OF THE ALCOHOLIC BEVERAGE INDUSTRY IN THE STATE OF NEW JERSEY:

The General Maximum Price Regulation issued by the Federal Price Administrator, on April 28, 1942, becomes effective on May 11, 1942 for wholesale prices, and on May 18, 1942 for retail prices.

My opinion has been asked, first, as to the applicability of the Maximum Price Regulation to those engaged in the sale of alcoholic beverages in New Jersey, and secondly, as to the policy of this Department with respect to the Regulation in question.

1. The General Maximum Price Regulation covers the sale of alcoholic beverages in original containers in the State of New Jersey.
2. While the Federal Regulation includes within its scope a field covered in part by regulations of this Department, this is not the time to debate the relative merits of these regulations or the respective rights within the field either of the State of New Jersey or of individual members of the industry. Suffice it to say that the Federal Regulation is designed in the common interest. Its purpose is the control of price increases which constitute a serious threat to our national economy and the successful prosecution of the war effort. Nor is this the time for unseemly differences of opinion between administrative agencies. We must all work together for the common good. Therefore, it will be the policy of this Department to cooperate with the Office of Price Administration and to integrate our regulations with the Federal Regulation promulgated on April 28th.

The effect of the new Federal Regulation is to place a ceiling on wholesale and retail prices at the top price in March, 1942.

REGULATIONS  
NO. 30

In some items, the Fair Trade Minimum Resale Price (generally the actual resale price to consumers) presently in effect in New Jersey is higher than the maximum permitted by the Federal Regulation. Licensees with Fair Trade contracts on file with this Department are now being given an opportunity to file new prices in time to comply with the OPA requirements.

REGULATIONS  
NO. 34

Similarly, in some instances, wholesale prices and discounts now on file pursuant to Regulations No. 34 are higher than were the top wholesale prices in March, 1942. Increases filed with this Department over the top prices in March will become void on May 11, 1942. It is important that such prices and discounts be returned to the point where they are not higher than the top figures for March, and that the filing of changes be made in time to become effective by May 11, 1942.

Under all of the circumstances, and in view of the fact that in most instances the contemplated price changes will be downward, the five-day waiting period prescribed in Rule 2 of Regulations No. 34 is hereby relaxed to permit the service of price statements upon retail customers on or before May 9, 1942, and the filing with this Department of a true copy of such price statement, with affidavit of service attached, as required by the regulations, on or before May 11, 1942, the effective date.

There is nothing in Regulations No. 30 or Regulations No. 34, or in the OPA Regulation, to prevent the filing as heretofore of prices below the March maximum.

The Federal Regulation may in some instances appear to impose undue hardship. If experience indicates that this is the case, reasonable modification will probably follow in the orderly development of its administration.

In view of the unjustifiable differential in some cases between retail prices in New Jersey and those prevailing in the metropolitan areas of adjacent states, the attention of all licensees is directed to Section 4 of the Federal Regulation, reading as follows:

"Section 4. Supplemental Regulations.

"If the maximum prices established for any commodity under the provisions of this Regulation fail equitably to distribute returns from the sale at retail of such commodity among producers, manufacturers, wholesalers and retailers, the Price Administrator will by supplementary regulation establish such maximum prices for different classes of sellers, or fix such base periods for the determination of their maximum prices, as will insure that each such class of sellers shall receive a fair share of such return."

It is anticipated that State licensees, in the establishment of prices, will give due consideration to a reasonable mark-up, thereby insuring to each class of seller a fair share of the return from the sale of the particular alcoholic beverage for which the price has been established.

By virtue of the power vested in me as State Commissioner of Alcoholic Beverage Control and pursuant to R. S. 33:1-1 et seq., and the amendments and supplements thereto, it is hereby ruled that a violation of the General Maximum Price Regulation, issued April 28, 1942, by the holder of any license authorizing the sale of alcoholic beverages in the State of New Jersey, shall be ground for the suspension of such license.

ALFRED E. DRISCOLL,  
Commissioner.

Dated: May 5, 1942.

7. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING THE INTEREST OF ANOTHER - AIDING AND ABETTING A NON-LICENSEE (DISQUALIFIED BECAUSE OF RESIDENCE) TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - LICENSE REVOKED.

DISCIPLINARY PROCEEDINGS - FAILURE TO DISCLOSE INTEREST IN LICENSE, IN VIOLATION OF R. S. 33:1-25, IN APPLICATION FOR EMPLOYMENT PERMIT - EXERCISING THE RIGHTS AND PRIVILEGES OF THE LICENSE - EMPLOYMENT PERMIT REVOKED.

In the Matter of Disciplinary Proceedings against )

ANTHONY P. JASMINE, )  
Church St. and Lloyd Rd., )  
P. O. Box 250, )  
Matawan Township, N. J., )

Holder of Plenary Retail Consump- )  
tion License C-13 for the fiscal )  
year 1940-41, issued by the Town- )  
ship Committee of the Township of )  
Matawan, )

-and- )

JOHN GARDELLA, )  
Church St. and Lloyd Rd., )  
Matawan Township, N. J., )

Holder of Employment Permit No. 5409 )  
for the fiscal year 1940-41, issued )  
by the State Commissioner of Alco- )  
holic Beverage Control. )  
- - - - - )

CONCLUSIONS AND ORDER

Thomas F. Shebell, Esq., Attorney for Defendant-Licensee and Defendant-Permittee.

G. George Addonizio, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee, Anthony P. Jasmine, was charged with (1) falsely denying in his application for license that any person other than himself was interested in the license, in violation of R. S. 33:1-25, and (2) knowingly aiding and abetting 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 defendant-permittee, John Gardella, was charged with (1) falsely denying in his application for employment permit that he was not interested in any New Jersey alcoholic beverage license, in violation of R. S. 33:1-25, and (2) exercising the rights and privileges of the liquor license of another, in violation of R. S. 33:1-26. In brief, Jasmine was charged with being a front for Gardella, and Gardella with being the concealed real owner of the business licensed to Jasmine.

It appears that in October 1939 Gardella, then a non-resident of New Jersey, purchased the property on which the licensed premises is situated. When he learned from "a man who works on a train" that he was ineligible for license by reason of his lack of

five years' residence in New Jersey, he procured Jasmine to make application for a liquor license but thereafter operated the business as his own from August 1940, when the license was granted, until March 1941, when it was surrendered. After the license was obtained in Jasmine's name, Gardella obtained an employment permit to authorize his "employment" on the licensed premises notwithstanding his lack of residence. In furtherance of the unlawful scheme, Jasmine swore in his application for license that no person other than himself was interested in the license or the business to be conducted thereunder, and Gardella swore falsely in his application for permit that he was not interested in Jasmine's (or any other) liquor license. There can be no doubt that both deliberately falsified their applications under oath.

While the investigation was in progress, Jasmine surrendered his license to the Matawan Township Committee; after the charges were preferred, Gardella surrendered his employment permit to this Department. Both have pleaded non vult to the charges.

A violator should not be permitted to escape the consequences of his wrong by his own act in surrendering his license or by reason of the purely fortuitous circumstance that the license has expired during the pendency of disciplinary proceedings. Hence, the provision of R. S. 33:1-31 that "the surrender of a license shall not bar proceedings to revoke such license" and those of Rule 1 of State Regulations No. 15 that disciplinary proceedings shall not be barred or abated by the expiration, transfer or extension of the license.

The violations here involved are the kind that strike at the very root of control, the exigencies of which require that the real owner of the licensed business be disclosed. Engagement of unqualified persons in the privileged licensed business by subterfuge and falsification under oath will not be tolerated.

Hence, in order to effect an adequate penalty for the violations in question, the license and permit, even though their term has expired, will be revoked, thus disqualifying Jasmine and Gardella, under R. S. 33:1-31, from obtaining any further liquor license or working for any liquor licensee in New Jersey for a period of two years from the date hereof. See Re Zabrycki and Klimenko, Bulletin 500, Item 4. Cf. Re Log Cabin, Bulletin 488, Item 9, and cases there cited.

However, I shall dismiss the affiliate proceeding brought to similarly disqualify the premises in question for a period of two years from being the site for any future liquor license. See R. S. 33:1-31.

Accordingly, it is, on this 4th day of May, 1942,

ORDERED, that Plenary Retail Consumption License C-13, heretofore issued to Anthony P. Jasmine for premises at Church Street and Lloyd Road for the fiscal year 1940-41 by the Matawan Township Committee, be and the same is hereby revoked; and it is further

ORDERED, that Employment Permit No. 5409, heretofore issued to John Gardella by the State Commissioner of Alcoholic Beverage Control for the fiscal year 1940-41, be and the same is hereby revoked.

ALFRED E. DRISCOLL,  
Commissioner.

8. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE (UNDISCLOSED PERSON QUALIFIED) - SITUATION CORRECTED - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against

ANTHONY DINO,  
175 Elm Street,  
Newark, N. J.,

Holder of Plenary Retail Consumption License C-473, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark, and transferred during pendency of these proceedings to

ANTHONY DINO and JOSEPH RIGGIO

for the same premises.

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

BY THE COMMISSIONER:

Licensee, Anthony Dino, has pleaded guilty to charges alleging that (1) he falsified his license application by failing to disclose the interest of Joseph Riggio in the license and the business to be conducted thereunder; and (2) he aided and abetted said Joseph Riggio, a non-licensee, to exercise the rights and privileges of his license.

Anthony Dino is a nephew by marriage of Joseph Riggio. It is admitted that, for a number of years, the latter has had a half-interest in the licensed business. Both parties were at all times qualified to hold a license and the only apparent reason why the license was taken in the name of Dino alone was because they "trusted each other." On April 22, 1942, after institution of proceedings herein, the license was transferred from Anthony Dino to Anthony Dino and Joseph Riggio.

As to penalty: Despite the fact that both parties named herein were fully qualified, the fact remains that defendant did swear falsely in his application and did act as a front for his partner. I shall impose the usual ten-day penalty. Re Kloufis and Mithos, Bulletin 396, Item 10; Re Kovacs, Bulletin 498, Item 4; Re Oasis Tavern, Bulletin 506, Item 7.

Accordingly, it is, on this 6th day of May, 1942,

ORDERED, that Plenary Retail Consumption License C-473, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Anthony Dino for premises at 175 Elm Street, Newark, and transferred to Anthony Dino and Joseph Riggio, for same address, be and the same is hereby suspended for ten (10) days, commencing May 11, 1942, at 3:00 A.M. and terminating May 21, 1942, at 3:00 A. M.

ALFRED E. DRISCOLL,  
Commissioner.

9. ELIGIBILITY - LARCENY BY SIXTEEN YEAR OLD BOY NOT MORAL TURPITUDE - NO PREVIOUS OR SUBSEQUENT RECORD - APPLICANT DECLARED ELIGIBLE TO HOLD EMPLOYMENT PERMIT.

May 2, 1942

Re: Case No. 425

In his application for employment permit, applicant, now nineteen years of age, disclosed his arrest on October 27, 1938 on a charge of grand larceny. Upon pleading guilty thereto, he was sentenced to a suspended indefinite term at Annandale Reformatory.

It appears that on October 27, 1938, when sixteen years of age, applicant entered the home of his employer and stole the sum of \$44.00 which was hidden in a trunk. When arrested, all of the money was found on his person and returned to his employer.

In determining whether applicant's crime involves the element of moral turpitude, a pertinent circumstance to consider is the fact that applicant was under eighteen years of age at the time of the commission of the offense. Re Case No. 158, Bulletin 488, Item 2, and cases therein cited. Fingerprint returns indicate that applicant has never been arrested on any other occasion or convicted of any other crime. It also appears that his single lapse from the straight and narrow was somewhat impelled by the unpleasant environment of his home.

For the past three years, applicant has been working for the same employer as a clerk and delivery boy in a grocery and delicatessen store. He wants to continue working, and the best way to make a better citizen of him is not to deplore what he did but to afford him a chance of earning an honest living. He is neither a gangster nor a hardened criminal -- just a boy who committed a single thoughtless offense. Under these circumstances, I do not believe the element of moral turpitude is involved in his crime.

It is recommended that applicant be advised that his conviction of the crime of grand larceny does not bar him from receiving an employment permit.

Samuel B. Helfand,  
Attorney.

APPROVED:

*Alfred C. Driscoll*  
Commissioner.

SEARCHED BY 1034