

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

BULLETIN 637

OCTOBER 23, 1944.

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

BULLETIN 637 OCTOBER 23, 1944.

1. DISCIPLINARY PROCEEDINGS - CHARGE OF SELLING ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE DISMISSED.

In the Matter of Disciplinary Proceedings against
MICHAEL J. CARNEY
T/a CARNEY'S POINT CAFE
340 N. Massachusetts Avenue
Atlantic City, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-122 for the fiscal year 1943-44, and now holder of Plenary Retail Consumption License C-211 for the current (1944-45) year, both issued by the Board of Commissioners of the City of Atlantic City.

Robert N. McAllister, Esq., Attorney for Defendant-Licensee.
Milton H. Cooper, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads non vult to the following charge:

"After 11:30 P. M. on Friday, January 21, 1944, and before 9:00 A.M. on Saturday, January 22, 1944, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to persons wearing the uniform of the armed forces of the United States of America, in violation of an Ordinance, adopted by the Board of Commissioners of the City of Atlantic City, on August 11, 1938, as amended by Section 1 of an Ordinance adopted by the said Board on September 10th, 1942."

The file discloses that on January 22, 1944, two investigators from the Department of Alcoholic Beverage Control observed alcoholic beverages being served to two members of the armed forces of the United States during hours when the sale of alcoholic beverages to members of the armed forces was prohibited by the local ordinance.

On February 10, 1944 an amendatory ordinance was adopted by the Board of Commissioners of Atlantic City extending the time in which alcoholic beverages might be sold, served or delivered to members of the armed forces of the United States of America. This ordinance expressly repealed the ordinance section under which the charge in the instant case was brought.

The identical question presented herein involving prosecution for violations under the repealed municipal ordinance has heretofore been determined. See Re Di Santi, Bulletin 636, Item 11. Being fully cognizant of the nature of the plea that has been entered by the defendant in the instant case, I shall, nevertheless, follow the ruling aforementioned and dismiss the charge preferred herein.

Accordingly, it is, on this 5th day of October, 1944,

ORDERED, that the charge herein be and the same is hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES IN VIOLATION OF R. S. 33:1-2 (DURING SUSPENSION PERIOD) - FILING FALSE TAX REPORTS - PREVIOUS RECORD - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against)
)
 BERTHA Y. KIRDZIK)
 T/a MAPLE INN)
 Alphano Road)
 Independence Township)
 P.O. Great Meadows, R.D., N.J.,)
)
 Holder of Plenary Retail Consumption License C-5 for the fiscal years 1943-44 and 1944-45, issued by the Township Committee of the Township of Independence.)
 -----)

CONCLUSIONS AND ORDER

Bertha Y. Kirdzik, Defendant-Licensee, Pro Se.
Edward F. Hodges, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads not guilty to charges alleging (1) that she sold alcoholic beverages in violation of R. S. 33:1-2, between February 1, 1944 and March 22, 1944, during which time the liquor license of defendant was under suspension, and (2) that, in violation of R. S. 54:45-1 and R. S. 54:47-3, she failed to file with the State Tax Commissioner requisite reports disclosing the alcoholic beverages stored, purchased and sold by her during the months of February and March, 1944, in that she filed for these months false reports of said storage, purchase and sales.

An investigator testified that he and other fellow investigators of the Department of Alcoholic Beverage Control kept the defendant's licensed premises under surveillance for several nights previous to March 21, 1944, at which time he and one other investigator entered the premises. An inventory of the stock of alcoholic beverages was made and upon an admission by the defendant that she had purchased alcoholic beverages during the period of suspension, it was discovered that the amount on hand fell far short of the actual purchases made. The licensee claimed, according to the testimony of the investigator, that she had served alcoholic beverages at all meals to farm employees of her husband and that a large amount of liquor was consumed by guests who attended a social given at her home on February 20, 1944. The licensee corroborated this explanation and furthermore stated that the drinks constituted gifts to the recipients thereof and that she did not receive any remuneration whatsoever for them.

A sale of alcoholic beverages, as defined by R. S. 33:1-1w, includes, among other things, the serving with meals, possession with intent to sell and the gratuitous delivery or gift of any alcoholic beverage by any licensee.

Even though defendant did not obtain payment for the alcoholic beverages served with meals to her husband's employees, it nevertheless constitutes a sale as well as a service of alcoholic beverages for the purpose of the Alcoholic Beverage Control Law. Cf. Re Morganstern and Oliner, Bulletin 292, Item 9; Re Franzblau, Bulletin 365, Item 13. I find the defendant guilty on charge (1).

The records filed by defendant were false in that she failed to disclose purchases made during the month of February 1944. A representative of a wholesale license testified that deliveries of alcoholic beverages were made on two occasions by his company during the month in question. Delivery slips dated February 4 and February 16, 1944 seized at the licensed premises verified this fact. I therefore find the defendant guilty of charge (2).

Defendant has a previous adjudicated record. On January 22, 1941 her license was suspended for ten days, commencing January 27, 1941, by the State Commissioner of Alcoholic Beverage Control upon her conviction of (1) selling below the Fair Trade price and (2) selling alcoholic beverages during prohibited hours. Re Kirdzik, Bulletin 441, Item 10. Again, on January 29, 1944, the municipal issuing authority suspended defendant's license for fifty days for allowing, permitting and suffering gambling on or about the licensed premises, said suspension beginning February 1, 1944.

During the latter suspension the violations in the instant case were committed. Because of the past record of the defendant, coupled with the seriousness of the violations committed herein, I shall revoke the license of defendant, said revocation to take effect immediately.

Accordingly, it is, on this 5th day of October, 1944,

ORDERED, that Plenary Retail Consumption License C-5, heretofore issued by the Township Committee of the Township of Independence to Bertha Y. Kirdzik, t/a Maple Inn, for premises Alphano Road, Independence Township, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

3. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PREVIOUS RECORD - LICENSE SUSPENDED FOR PERIOD OF 30 DAYS.

In the Matter of Disciplinary Proceedings against)

MICHAEL PETTI)
642 Broadway)
Bayonne, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-83, issued by the Board of Commissioners of the City of Bayonne.)
-----)

Michael Petti, Defendant-Licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads not guilty to the charge that on July 6, 1944 he possessed, at his premises, five 4/5 quart bottles labeled "Calvert Reserve Blended Whiskey, 86.8 Proof", which bottles contained alcoholic beverages not genuine as labeled; such possession being in violation of R. S. 33:1-50.

An investigator of the Department of Alcoholic Beverage Control testified that he tested the contents of seventeen open bottles of whiskey while at the defendant's licensed premises on July 6, 1944. Four full bottles and one nearly full bottle were labeled "Calvert Reserve" whiskey. These bottles had thereon old strip stamps. The liquor in these bottles appeared to the agent to be off in proof and off in color. The investigator stated that he seized the whiskey for the purpose of having an analysis made of the contents thereof at the Department laboratory.

The departmental chemist testified that he made an analysis of the contents of the five bottles in question, four of which varied in acids, solids and proof when compared with an analysis of a genuine sample. The contents of the remaining bottle varied in proof and solids upon comparison with an analysis of the genuine liquor, but the acids therein came within the accepted range in this particular brand of whiskey. The chemist's conclusion was that the five bottles were not genuine "Calvert Reserve Blended Whiskey, 86.8 Proof."

The defendant testified that he had no knowledge of the fact that the bottles had been refilled. He persisted in the claim that the whiskey was genuine although there was no testimony produced in an attempt to offset the conclusion reached by the departmental chemist. I therefore find defendant guilty of the charges preferred herein.

On April 2, 1942 defendant, while owner of a liquor establishment in Pequannock Township, had his license suspended by the State Commissioner of Alcoholic Beverage Control for three days beginning April 7, 1942, on the charge of making a false statement in his application for a license. See Re Petti, Bulletin 502, Item 5. Again, on June 4, 1942, the State Commissioner suspended defendant's license for the balance of its term in proceedings instituted at the request of the State Tax Commissioner for failure to pay a penalty assessed by him. (Tax Rev. 1049).

Under all of the circumstances, I shall suspend the license of defendant for a period of thirty days.

Accordingly, it is, on this 6th day of October, 1944,

ORDERED, that Plenary Retail Consumption License C-83, issued by the Board of Commissioners of the City of Bayonne to Michael Petti, for premises 642 Broadway, Bayonne, be and the same is hereby suspended for a period of thirty (30) days, commencing at 2:00 A. M. October 14, 1944 and terminating at 2:00 A. M. November 13, 1944.

ALFRED E. DRISCOLL
Commissioner.

4. ACTIVITY REPORT FOR AUGUST, 1944

To: Alfred E. Driscoll, Commissioner

ARRESTS: Licensees and employees - - - - - 3 Bootleggers - - - - - 22
 Total number of persons arrested - - - - - 25

SEIZURES: Still - 1 to 50 gallons daily capacity - - - - - 1
 50 gallons and more daily capacity - - - - - 0
 Total number of stills seized - - - - - 1
 Mash - gallons - - - - - 200
 Motor vehicles - Trucks - - - - - 2
 Passenger cars - - - - - 1
 Total number of motor vehicles seized - - - - - 3
 Beverage alcohol - gallons - - - - - 34
 Brewed malt alcoholic beverages (beer, ale, etc.) - gallons - - - - 29.25
 Wine - gallons - - - - - 10.75
 Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons - - 93

RETAIL LICENSEES:
 Total number of premises inspected - - - - - 1,231
 Total number of bottles gauged - - - - - 8,384
 Total number of premises where violations were found - - - - - 66
 Total number of violations found - - - - - 90
 Type of violations found:
 Illicit (bootleg) liquor - - - 15 Improper beer tap markers - - - - - 17
 Gambling devices - - - - - 0 Stock disposal permits necessary - - 12
 Prohibited signs - - - - - 0 No sign denoting legal sale hours - -
 Unqualified employees - - - - 29 off-premises consumption - - - - - 3
 "Fronts" (concealed ownership) - 6 Other types of violations - - - - 8

MILITARY AREA PATROL INSPECTIONS: - - - - - 401

STATE LICENSEES:
 Premises inspected - - - - - 13
 License applications investigated - - - - - 11

COMPLAINTS:
 Investigated, reviewed and closed - - - - - 340
 Investigation assigned, not yet completed - - - - - 324

LABORATORY:
 Analyses made - - - - - 187
 "Shake-up" cases (alcohol, water and artificial coloring) - - - - - 27
 Liquor found to be not genuine as labeled - - - - - 21

IDENTIFICATION BUREAU:
 Criminal fingerprint identifications made - - - - - 31
 Persons fingerprinted for non-criminal purposes - - - - - 315
 Identification contacts with other enforcement agencies - - - - - 364
 Motor vehicle identifications via N. J. State Police Teletype - - - - 19

DISCIPLINARY PROCEEDINGS:
 Cases transmitted to municipalities - - - - - 39
 Cases instituted at Department - - - - - 16
 Cancellation proceedings at Department - - - - - 1

HEARINGS HELD AT DEPARTMENT:
 Total number of hearings held - - - - - 42
 Appeals - - - - - 7 Seizures - - - - - 4
 Disciplinary proceedings - - 18 Lifting of automatic
 Eligibility - - - - - 12 suspension - - - - - 1

PERMITS ISSUED:
 Total number of permits issued - - - - - 970
 Unqualified employees - - - - - 316
 Solicitors - - - - - 110
 Social affairs - - - - - 233
 Home manufacture of wine - - - - - 20
 Disposal of alcoholic beverages - - - - - 136
 Miscellaneous permits - - - - - 155

Respectfully submitted,
 Sydney B. White
 Chief Inspector.

Due to an oversight, the above report was not previously published in the Bulletin.

Alfred E. Driscoll
 Commissioner

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

5. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1944 TO SEPTEMBER 30, 1944 AS REPORTED TO THE COMMISSIONER OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R. S. 33:1-19.

CLASSIFICATION OF LICENSES

County	Plenary Retail Consumption		Plenary Retail Distribution		Club		Limited Retail Distribution		Seasonal Retail Consumption		Number Surrendered Revoked Expired	Number Licenses in Effect	Total Fees Paid
	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid			
Atlantic	426	\$ 162,589.17	59	\$ 20,225.34	9	\$ 850.00						494	\$ 183,664.51
Bergen	776	258,781.49	237	57,550.17	42	4,024.45	23	\$ 1,045.00	5	\$ 944.22		1083	322,345.33
Burlington	176	57,559.45	16	3,950.00	30	3,675.00	1	25.00				223	65,209.45
Camden	437	186,118.52	55	19,789.01	53	4,395.06	1	40.00	1	104.03	1	546	210,946.62
Cape May	122	54,950.00	11	3,150.00	11	1,142.60						144	59,242.60
Cumberland	78	25,274.21	8	1,937.74	26	2,908.36					1	111	30,120.31
Essex	1363	684,134.36	339	159,856.97	74	9,750.00	17	838.77				1793	854,580.10
Gloucester	107	30,250.00	10	1,600.00	5	300.00						122	32,150.00
Hudson	1510	657,553.77	267	103,803.15	45	5,915.62	41	1,600.00			1	1862	771,872.54
Hunterdon	70	18,030.27	1	300.00	1	150.00						72	18,480.27
Mercer	422	176,854.73	44	11,174.25	36	4,589.59			1	92.91		503	192,711.48
Middlesex	587	230,081.47	45	12,571.22	33	2,883.97					1	664	245,536.66
Monmouth	470	191,901.65	74	20,588.63	22	2,775.00	5	175.00	22	7,468.29	1	592	222,908.57
Morris	312	92,979.80	66	16,287.67	27	2,250.00			7	1,144.31	1	411	112,661.78
Ocean	153	71,386.28	24	9,154.00	7	699.45						184	81,239.73
Passaic	858	331,230.44	118	33,327.11	26	3,220.00	9	400.00			1	1010	368,177.55
Salem	49	15,550.00	4	550.00	8	725.00						61	16,825.00
Somerset	178	59,176.86	24	5,675.00	8	800.00						210	65,651.86
Sussex	134	28,867.33	11	1,550.00	3	160.00			3	450.00		151	31,027.33
Union	536	265,137.30	126	42,365.20	54	6,280.02	12	550.00				728	314,332.52
Warren	131	35,255.00	12	2,207.50	20	2,065.82			2	261.93		165	39,790.25
TOTALS	8895	\$3,633,662.10	1551	\$530,612.96	540	\$60,059.94	109	\$4,673.77	41	\$10,465.69	7	11129	\$ 4,239,474.46

ALFRED E. DRISCOLL, Commissioner

Respectfully submitted,
 Erwin B. Hock
 Deputy Commissioner

6. AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - SALE OF ALCOHOLIC BEVERAGES TO MINORS - LICENSEE PAID FINE OF \$100.00 - LICENSE SUSPENDED FOR PERIOD OF 10 DAYS IN DISCIPLINARY PROCEEDINGS - APPLICATION TO LIFT GRANTED.

In the Matter of a Petition)
by)

OAK RIDGE RESTAURANT CORP.)
T/a LONGWOOD LAKE CASINO)
Longwood Valley Road)
P. O. Oak Ridge)
Jefferson Township)
Morris County, N. J.,)

ON PETITION
CONCLUSIONS AND ORDER

To Lift the Automatic Suspension)
of License C-25 issued by the)
Township Committee of the)
Township of Jefferson.)
-----)

Clifford A. Johnson, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

It appears from the petition filed herein that on October 6, 1944 Louis Melniker, President of the licensee corporation, pleaded guilty in the Court of Special Sessions of Morris County to a charge alleging that he had sold alcoholic beverages to minors and that, as a result of said conviction, Louis Melniker has paid a fine of One Hundred Dollars (\$100.00) imposed by said Court.

It further appears from the petition, and from the records of the Department of Alcoholic Beverage Control, that the Township Committee of the Township of Jefferson, in disciplinary proceedings, had previously suspended the license of the corporation for a period of fifteen days, less five days for the plea, effective from October 2, 1944 to October 12, 1944, after the corporation, in said proceedings, had pleaded guilty to the charge of selling alcoholic beverages to minors. The criminal proceedings instituted against the President of the corporation and the charges in the disciplinary proceedings were based upon the same facts. Because of the criminal conviction, the license of the corporation has been automatically suspended for the balance of its term. R. S. 33:1-31.1. The petition herein requests that the automatic suspension may be lifted.

This case involves the sale of alcoholic beverages to two minors, one of whom was seventeen years of age and the other eighteen years of age.

It has been the policy of this Department to lift an automatic suspension when, and only when, the license has been suspended for what appears, in view of all the facts, to be a sufficiently penalizing length of time.

Under all the circumstances, the penalty imposed by the Township Committee of the Township of Jefferson appears to have been adequate. Hence I shall grant the relief sought in the petition.

Accordingly, it is, on this 13th day of October, 1944,

ORDERED, that the automatic suspension of License C-25, held by Oak Ridge Restaurant Corp., t/a Longwood Lake Casino, issued by the Township Committee of the Township of Jefferson, for premises on Longwood Valley Road, Oak Ridge, Jefferson Township, be lifted, and said license is hereby restored to full force and operation, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

- 7. DISCIPLINARY PROCEEDINGS - PERMITTING FEMALE EMPLOYEES TO ACCEPT DRINKS AT THE EXPENSE OF PATRONS IN VIOLATION OF RULE 22 OF STATE REGULATIONS NO. 20 - EMPLOYING DISQUALIFIED PERSONS (NON-RESIDENTS) WITHOUT REQUISITE PERMIT IN VIOLATION OF R. S. 33:1-26 AND RULE 1 OF STATE REGULATIONS NO. 11 - LICENSE SUSPENDED FOR PERIOD OF 60 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against LUCILLE SAVASTANO & LOUISE C. NOBILE 94 Prospect Street Paterson, 1, N. J., Holders of Plenary Retail Consumption License C-298, issued by the Board of Alcoholic Beverage Control of the City of Paterson.

CONCLUSIONS AND ORDER

Lucille Savastano & Louise C. Nobile, Defendant-Licensees, Pro Se. Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendants entered a plea of non vult to charges alleging that they (1) permitted female employees to accept drinks at the expense of patrons, and (2) employed non-residents without permit.

It appears that three females employed by the defendants drank indiscriminately with male patrons at the tavern in question. Two of them, both non-residents, were hired through a New York theatrical agency nominally as entertainers but, because of the Federal amusement tax, their duties were limited, at the express direction of the defendants, "to drink only with patrons and nothing else." The third female, ostensibly a waitress, spent most of her time at the bar, imbibing at the expense of any man who offered to buy her a drink.

The full details disclosed by the reports made by two ABC agents who observed the infractions on three consecutive days, to wit, July 5, 6 and 7, 1944, may be omitted. Suffice it to say that it is apparent that the defendants brazenly defied the salutary regulation banning the employment of "hostesses" on licensed premises.

This is not the usual case where a female employee has, on occasion, risked the possibility of detection by consuming beverages at the expense of an insistent patron. On the contrary, the circumstances here presented support the conclusion that the defendants employed the girls in question solely as "hostesses" and made a deliberate practice of providing their male customers with the companionship of females who earned their salaries simply by accepting drinks at the expense of such customers.

In addition to the "clip joint" aspect of the "hostess" problem, the real mischief in this type of violation lies in the fact that it may ultimately result in the commission of more serious offenses.

Although not present in this case, its usual concomitants are solicitation for immoral purposes and, in the more flagrant instances, prostitution on the licensed premises. The suppression of such consequences demands the most vigorous enforcement and prosecution of the rule aimed at the "hostess" racket.

Giving due consideration to the absence of any previous disciplinary proceedings against the defendants, I shall, for the violations herein, fix the penalty at a period of sixty days. The plea merits a remission of five days, leaving a net suspension of fifty-five days.

Accordingly, it is, on this 13th day of October, 1944,

ORDERED, that Plenary Retail Consumption License C-298, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Lucille Savastano & Louise C. Nobile for premises 94 Prospect Street, Paterson, be and the same is hereby suspended for a period of fifty-five (55) days, commencing at 3:00 A. M. October 17, 1944 and terminating at 3:00 A. M. December 11, 1944.

ALFRED E. DRISCOLL
Commissioner.

8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR PERIOD OF 10 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against ANNA SPANICCIATI 798 East State Street Trenton, N. J., Holder of Plenary Retail Consumption License C-208, issued by the Board of Commissioners of the City of Trenton.

CONCLUSIONS AND ORDER

Felcone & Felcone, Esqs., by Joseph J. Felcone, Esq., Attorneys for Defendant-Licensee. Milton H. Cooper, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded guilty to charges alleging that she sold alcoholic beverages to minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

On October 2, 1944 two minor girls, one aged eighteen years and the other twenty years, were each served two glasses of beer by the defendant's bartender.

Since the violation does not appear to be an aggravated one, and the defendant has no previous record, I shall suspend the license for the usual period of ten days, with five days remitted for the guilty plea, leaving a net suspension of five days.

Accordingly, it is, on this 17th day of October, 1944,

ORDERED, that Plenary Retail Consumption License C-208, heretofore issued by the Board of Commissioners of the City of Trenton to Anna Spanicciati for premises 798 East State Street, Trenton, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 A. M. October 23, 1944 and terminating at 2:00 A. M. October 28, 1944.

ALFRED E. DRISCOLL
Commissioner.

9. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN APPLICATION FOR LICENSE CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE RIGHTS AND PRIVILEGES OF LICENSE - LICENSE SUSPENDED FOR BALANCE OF ITS TERM.

In the Matter of Disciplinary Proceedings against LOUIS AND AMELIO POLITO T/a BUNNY'S TAVERN 65 Main Avenue Clifton, N. J., Holders of Plenary Retail Consumption License C-102, issued by the Municipal Council of the City of Clifton.

CONCLUSIONS AND ORDER

Louis P. Bertoni, Esq., Attorney for Defendant-Licensees. Gaylord R. Hawkins, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendants pleaded guilty to charges alleging that they (1) suppressed the interest of Joseph Polito in their application for license, and (2) ever since May 4, 1944 they permitted the said Joseph Polito to exercise the privileges of their license.

Prior to January 1944, Joseph Polito, a brother of the defendants, was ineligible to hold a liquor license because of his criminal record. On January 21, 1944 this disqualification was lifted in accordance with the provisions of R. S. 33:1-31.2.

Shortly thereafter, in May 1944, the defendants, together with Joseph Polito, purchased the license in question. The latter's equal partnership interest was not then disclosed and has remained undisclosed ever since.

In August 1944 a corporation was organized in which Joseph Polito and the defendants appeared as stockholders, and application for transfer of the license to the corporation was made by the defendants. The local issuing authority, in the exercise of its discretion, denied the application because of the criminal record of Joseph Polito, despite the lifting of his mandatory disqualification as aforesaid.

It is quite apparent that the concealment of Joseph Polito's interest in the license was motivated by reason of his criminal record. The issuing authority's refusal to transfer the license when Joseph Polito was included in the corporation's application for transfer supports the conclusion that the defendants were fearful that no license in which Joseph Polito had an interest would be issued by the municipality.

The defendants have consented that the license, under which no business may be conducted while the unlawful arrangement continues, may be suspended for the balance of its term, to wit, until June 30, 1945. They have requested, however, that in the event a correction is effected, leave be reserved to apply to me for a lifting of the suspension. Such request will abide the event.

Accordingly, it is, on this 17th day of October, 1944,

ORDERED, that Plenary Retail Consumption License C-102, heretofore issued by the Municipal Council of the City of Clifton to Louis and Amelio Polito, t/a Bunny's Tavern, for premises 65 Main Avenue, Clifton, be and the same is hereby suspended for the balance of the term, effective October 23, 1944, at 3:00 A. M.

ALFRED E. DRISCOLL
Commissioner.

10. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION FOR LICENSE CONCEALING MATERIAL FACT - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR PERIOD OF 10 DAYS.

In the Matter of Disciplinary Proceedings against
SCHARF'S LIQUOR SHOP, INC.
17 E. Main Street and 2 Church St.
Ramsey, N. J.,
Holder of Plenary Retail Distribution License D-1, issued by the Borough Council of the Borough of Ramsey.

CONCLUSIONS
AND ORDER

Harold Meltzer, Esq., Attorney for Defendant-Licensee.
Milton H. Cooper, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that, in its application for its current license, it suppressed the fact that Leslie Gibian was the true owner of the corporate stock nominally held by two other persons, in violation of R. S. 33:1-25.

In November 1941 Leslie Gibian, not being a five-year resident of this State, caused 91% of the stock of the defendant corporation to be held on his behalf by two other individuals.

After the institution of these proceedings, all of the stock, with the exception of one qualifying share, was distributed to Leslie Gibian and his wife, both of whom have resided in New Jersey since November 1941. Under the recent amendment to the statute which substituted a residence of no specified duration in place of the former five-year period, they are now qualified to hold more than 10% of the stock of a corporate licensee. See R. S. 33:1-25, as amended by P. L. 1943, c. 46.

In view of the correction, and the absence of any previous record, I shall suspend the license for ten days. Cf. Re G. & P. Restaurant, Inc., Bulletin 620, Item 1.

Accordingly, it is, on this 17th day of October, 1944,

ORDERED, that Plenary Retail Distribution License D-1, heretofore issued by the Borough Council of the Borough of Ramsey to Scharf's Liquor Shop, Inc. for premises at 17 East Main Street and 2 Church Street, Ramsey, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A. M. October 23, 1944, and terminating at 2:00 A. M. November 2, 1944.

ALFRED E. DRISCOLL
Commissioner.

11. DISCIPLINARY PROCEEDINGS - PERMITTING BOOKMAKING AND GAMBLING ON LICENSED PREMISES IN VIOLATION OF RULE 7 OF STATE REGULATIONS NO. 20 - PREVIOUS RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against LOUIS SILVERSTEIN T/a LOU'S BAR 807 "F" Street Belmar, N. J., Holder of Plenary Retail Consumption License C-5, issued by the Board of Commissioners of the Borough of Belmar.

CONCLUSIONS AND ORDER

Louis Silverstein, Defendant-Licensee, Pro Se. Gaylord R. Hawkins, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to the following charge:

"On September 6, 7 and 11, 1944, and on divers occasions theretofore, you allowed, permitted and suffered bookmaking and gambling on and about your licensed premises, in violation of Rule 7 of State Regulations No. 20."

On the occasions in question, agents of the Department of Alcoholic Beverage Control placed various bets with one of the bartenders of the licensee. On at least one occasion the licensee was on the premises, although not behind the bar. While the licensee was on the premises a bet was openly placed with the bartender, who went to a telephone booth, apparently in the barroom, closed the door, and shortly thereafter returned to his place behind the bar.

The licensee states he had no knowledge of the betting and after the arrest of the bartender discharged him from his employment. The bartender states that he occasionally accepted bets for friends which he placed with a bookmaker whom he knew. I am satisfied that the licensee knew or should have known of the unlawful activities taking place on the licensed premises. His failure to properly manage his business, far from affording him an escape from the consequence of the violations, is good ground for additional censure.

The licensee has a previous record. In October 1939 his license was suspended for ten days upon his plea of guilty to three charges, namely, (1) the sale of alcoholic beverages at less than the Fair Trade price, (2) selling and serving alcoholic beverages on his licensed premises during prohibited hours, and (3) permitting the premises to be open during prohibited hours, in violation of the local ordinance. Bulletin 351, Item 11.

Under all the circumstances, I shall, in the pending disciplinary proceedings, suspend defendant's license for a period of twenty-five days, less five days for the plea, making a net suspension of twenty days.

Accordingly, it is, on this 18th day of October, 1944,

ORDERED, that Plenary Retail Consumption License C-5, issued by the Board of Commissioners of the Borough of Belmar to Louis Silverstein, t/a Lou's Bar, for premises 807 "F" Street, Belmar, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 A. M. October 24, 1944 and terminating at 2:00 A. M. November 13, 1944.

ALFRED E. DRISCOLL
Commissioner.

12. APPELLATE DECISIONS - NEW JERSEY LICENSED BEVERAGE ASSOCIATION ET AL. v. SALVATORE D'ELIA AND FRANK FEORANZ, T/A D & F TAVERN, AND HACKENSACK.

NEW JERSEY LICENSED BEVERAGE ASSOCIATION (a corporation), BERGEN COUNTY LIQUOR DEALERS ASSOCIATION (Div. 16 OF NEW JERSEY LICENSED BEVERAGE ASSOCIATION) and WILLIAM BROWER, SR.,

Appellants,

-vs-

SALVATORE D'ELIA and FRANK FEORANZ, t/a D & F TAVERN, and CITY COUNCIL OF THE CITY OF HACKENSACK,

Respondents)

ON APPEAL
CONCLUSIONS AND ORDER

William C. Egan, Esq., Attorney for Appellants.
Horace F. Banta, Esq., Attorney for Respondent, City Council of the City of Hackensack.
Salvatore D'Elia and Frank Feoranz, Pro Se.

BY THE COMMISSIONER:

The respondents, D'Elia and Feoranz, applied to the City Council of Hackensack for a transfer to them, and to premises 34-36 Fair Street, of a plenary retail consumption license formerly held by another at premises 37 Hudson Street. This appeal is from the approval of such application.

By stipulation of all of the interested parties, it has been agreed that "the only point in controversy" is whether Section 9 of Ordinance No. 247 adopted by the respondent Council on October 4, 1937 applies "to transfers of licenses from place to place or only to the granting of new licenses."

The pertinent portion of the ordinance in question provides:

"No Plenary Retail Consumption Licenses shall hereafter be granted for any premises within five hundred feet of any other premises wherein business is carried on under an existing Plenary Retail Consumption License...."

The Council contends that the quoted language has reference only to the issuance of new licenses and does not prohibit the transfer of licenses within the proscribed distance. With this contention I agree. There would appear to be little, if any, ambiguity as to the meaning of the words "no.....licenses shall hereafter be

granted." There use in connection with the context makes it apparent that "granted" was intended to be synonymous with "issued." Obviously, the issuance of a license is something entirely different from the transfer of an outstanding license. To adopt any contrary construction would not only do violence to the plain language used, but would be virtually tantamount to rewriting the ordinance. That is not my function.

A similar construction of the ordinance under consideration was informally reached by the late Commissioner Burnett when it came to his attention shortly after its adoption. In a letter addressed to the respondent municipality under date of June 25, 1938, he said:

"Section 9, as amended, prohibits the granting of plenary retail consumption licenses within five hundred feet of an existing licensed premises. I note that, as worded, it applies to the granting of all licenses. What about renewals? Is it the thought of the Council to permit present holders of licenses who may be within 500 feet of another place to renew their licenses and continue in the present location? If so, Section 9 must be amended to contemplate that situation. I take it that you meant that Section 9 was to apply in this regard only to the issuance of new licenses.

"Furthermore, what about transfers? If it was the intention of the Council to permit transfers of licenses to premises within five hundred feet of an existing premises, well and good. But if the intention was to prohibit both the issuance of new licenses and transfers of existing licenses to such premises, I call to your attention that the restriction as written applies only to the granting of licenses, and does not affect transfers. See New Jersey Licensed Beverage Association v. Camden and Viviani, Bulletin 215, Item 5, and especially Re Guenther, Bulletin 206, Item 15."

At that time Commissioner Burnett suggested that the ordinance be amended so as to include transfers by the use of appropriate language to effectuate such purpose. No such amendment has ever been adopted.

It would seem to be clear that, if any considerations dehors the ordinance were necessary in aid of its interpretation, the practical construction placed upon it by the municipality is a convincing indication that transfers were not intended to be prohibited thereunder. In addition to its failure, after a lapse of more than six years, to amend the ordinance as suggested, its very action of approving the instant transfer is mute evidence that it intended only to prohibit the grant of new licenses within the distance limitation, and not transfers of existing licenses.

This conclusion necessarily leads to an affirmance of the Council's action and a dismissal of the appeal.

Although, in view of the result reached herein, no decision as to the legality of the ordinance is necessary, query whether the ordinance is invalid because of its failure to include a restriction against transfers within the prohibited distance. See Cassullo v. White Township, Bulletin 399, Item 4.

Accordingly, it is, on this 18th day of October, 1944,

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

ALFRED E. DRISCOLL
Commissioner.

13. ELIGIBILITY - FACTS EXAMINED - VIOLATION OF THE WHITE SLAVE TRAFFIC ACT INVOLVES MORAL TURPITUDE - APPLICANT ADVISED THAT HE IS INELIGIBLE TO HOLD LIQUOR LICENSE OR TO BE EMPLOYED BY LIQUOR LICENSEE IN THIS STATE.

October 13, 1944

Re: Case No. 543

Applicant seeks a determination as to whether or not, by virtue of R. S. 33:1-25, his convictions of crime preclude him from being associated with the alcoholic beverage industry.

The criminal records disclose that the applicant herein was convicted for violation of the White Slave Traffic Act, as a result of which he was sentenced by a Judge of the United States District Court to one year and one day in a Federal penitentiary. This sentence, however, was thereafter suspended and he was placed on probation for a period of three years. It appears from the record that the applicant transported a girl, sixteen years of age, from another state to New Jersey for immoral purposes. Applicant, in explanation of the Federal conviction, testified that he was intoxicated at the time and didn't realize what he was doing. Subsequent thereto, on July 23, 1940, applicant was convicted as a disorderly person by a local magistrate, as a result of which he was sentenced to twenty-five days in a county workhouse, being released therefrom on August 13, 1940.

Again, on September 23, 1943, applicant was convicted in the Police Court of a municipality in this state on the charge of assault and battery and also for violation of an ordinance because of his uttering indecent language. Applicant was fined \$23.00 for assault and battery and \$50.00 for the other offense.

A conviction for violation of the White Slave Traffic Act, commonly known as the Mann Act, is, of necessity, a crime involving moral turpitude. Whether the other criminal convictions involved moral turpitude need not, therefore, be determined at this time.

It is hereby recommended that, since the applicant has been convicted of a crime wherein the element of moral turpitude is present, he be advised of his ineligibility to be associated in any capacity whatsoever with the alcoholic beverage industry.

Clarence E. Kremer
Attorney.

APPROVED:

ALFRED E. DRISCOLL
Commissioner.

14. PROCEEDINGS TO DISQUALIFY PREMISES - PREMISES DECLARED INELIGIBLE FOR LIQUOR LICENSE FOR PERIOD OF TWO YEARS PURSUANT TO R. S. 33:1-31.

In the Matter of Proceedings)
to declare ineligible licensed)
premises owned by)

BENJAMIN KIRDZIK)
Alphano Road)
Independence Township)
P. O. Great Meadows, R.D., N.J.)
-----)

O R D E R

Benjamin Kirdzik, Pro Se.
Edward F. Hodges, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On June 9, 1944 a notice was served on Benjamin Kirdzik to show cause why the premises owned by him should not be declared ineligible to become the subject of any further license for a period of two years. The first floor of the premises in question had been operated by Bertha Kirdzik as a tavern by virtue of a plenary retail consumption license issued to her by the Township Committee of the Township of Independence. On October 5, 1944 the liquor license of the said Bertha Kirdzik was revoked by an order of the State Commissioner of Alcoholic Beverage Control after the licensee had been adjudged guilty of divers violations of the Alcoholic Beverage Law. See Re Kirdzik, Bulletin 637, Item 2.

Benjamin Kirdzik, husband of Bertha Kirdzik, testified that he has always helped his wife in the operation of the tavern.

Because of the serious violations committed on the premises owned by Benjamin Kirdzik under the license issued to his wife, I shall declare the premises herein to be ineligible to become the subject of any further alcoholic beverage license for a period of two years from October 5, 1944.

Accordingly, it is, on this 13th day of October, 1944,

ORDERED, that premises on Alphano Road, Independence Township, New Jersey, owned by Benjamin Kirdzik, be and the same are hereby declared ineligible for a license for a period of two years, commencing October 5, 1944.

Alfred C. Driscoll
Commissioner.