

STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
1080 Broad Street Newark, N. J.

BULLETIN 558

MARCH 22, 1943.

1. STATE LICENSES - APPLICATION FOR RECTIFIER AND BLENDER LICENSE - DENIED.

HEREIN OF THE COMMISSIONER'S AUTHORITY IN THE GRANTING OR DENYING OF APPLICATION FOR STATE LICENSES.

In the Matter of an Application )  
by )

COINTREAU, LTD. )

CONCLUSIONS

for a Rectifier and Blender )  
License for premises located at )

110 West Franklin Ave. )  
Pennington, N. J. )

Frederic M. P. Pearse, Esq., Attorney for Applicant.  
Cassel R. Ruhlman, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

On February 3, 1943 Cointreau, Ltd., a New Jersey corporation, made application to the State Commissioner of Alcoholic Beverage Control for a Rectifier and Blender License for premises at 110 West Franklin Avenue, Pennington, N. J. On February 4 and February 11, 1943 Cointreau, Ltd. caused notice of its application to be published in the Trenton Evening Times (R. S. 33:1-25). On February 8, 1943 the Reverend A. K. Magner, Minister of the First Presbyterian Church of Pennington, New Jersey, filed with me a written objection to the issuance of the license. On February 11, 1943 Pennington Grange 64 P. of H., Pennington, New Jersey, filed with me a similar written objection. In accordance with Rule 11 of State Regulations No. 1, a notification of the date, hour and place of hearing to be held upon said objections was sent to the applicant, to the two above mentioned objectors, and to numerous other persons who had previously filed written objections to the issuance of the license.

The application filed by Cointreau, Ltd. describes the premises sought to be licensed as a brick and stone building located, as already indicated, at 110 West Franklin Avenue, Pennington, New Jersey; and sets forth also the location of applicant's warehouse and salesroom in the same building. The application states, further, that Cointreau, Ltd. is not the owner of the building, but has leased or rented it from Pennington Holding Co., whose principal office is at 60 Branford Place, Newark, New Jersey.

It appears from evidence taken at the hearing held on February 18, 1943 that, on February 5, 1934, the Borough Council of the Borough of Pennington adopted the following resolution:

"BE IT RESOLVED by the Mayor and Common Council of the Borough of Pennington, in accordance with the provisions of Chapter 436, P. L. 1933, and the authority therein granted, that the sale of all alcoholic beverages at retail, except for consumption on railroad trains, airplanes, and boats, within the Borough of Pennington be, and the same is hereby prohibited. Adopted 5 Ayes 0 Nays."

It further appears that, on March 2, 1936, the Borough Council of the Borough of Pennington adopted the following ordinance:

"Be it ordained by the Mayor and Common Council of the Borough of Pennington that:

"1. In accordance with the provisions of Chapter 436, P. L. 1933 and the several amendments and supplements thereto no 'Plenary retail consumption licenses', 'Seasonal retail consumption licenses', 'Plenary retail distribution licenses', 'Limited retail distribution licenses', or 'Club licenses', shall be granted within the Borough of Pennington."

Thus, it is apparent that the members of the governing body of this community have exercised the powers conferred upon them by R. S. 33:1-12, effectively to prevent the sale of alcoholic beverages at retail within their municipality. No licenses to sell alcoholic beverages at retail have been issued in the Borough under the provisions of the Alcoholic Beverage Law, and no retail licenses can be issued while the ordinance remains in effect.

At the hearing Earl H. Dean, a Pennington Borough Councilman, testified that he opposed issuance of applicant's license because of his belief that it would be very inconsistent for the community to have within its boundaries a plant that would produce a commodity the retail sale of which the community does not permit; and, further, because of his belief that it would be "an education to young people of a nature the community does not want, definitely." The Reverend A. K. Magner testified that his church has a membership of 508 persons; that he also represented, for purposes of the objection herein, the Methodist Episcopal Church of Pennington with a membership of 400; and that he opposed the license issuance because, during all his residence in the Borough, Pennington has stood out as a community opposed to every phase of the liquor business. Francis A. Stanger, Jr., Esq., a member of the Board of Trustees of the Pennington School, located in the Borough, stated that he opposed the issuance of the license because in his opinion it would be contrary to the best interest of the School to have the license granted. George W. Scarborough, a resident of the Borough for fifty-five years, testified that he opposed the granting of the license because, since 1918, the Borough has safeguarded itself from the liquor traffic "in any way." Mr. Scarborough, who appeared in his individual capacity and as a representative of the Methodist Church Board, testified further that "...so far as the churches, I think they are taking into consideration the fact they consider themselves their brother's keeper and do not want manufactured within the Borough limits anything to hurt the citizens of Pennington or their neighbors abroad." Mrs. Norman Sked, who has lived in the Borough for many years, testified that she opposed the granting of the license because in her opinion it would be detrimental for the young people in the community and students of the Pennington School for Boys. Seven other Borough residents appeared personally at the hearing, and it was stipulated that they, if called to testify, would voice objections similar to those advanced by the Pennington witnesses who had testified.

From the testimony given by applicant and from our investigation, it appears that the building at 110 West Franklin Avenue is located on a railroad siding, and that for some time prior to October 1941 it was used for the manufacture of candy. In October 1941 it was purchased by David N. Popik from a trustee in bankruptcy of the candy manufacturer and, on December 2, 1941, title was transferred from David N. Popik and wife to Pennington Holding Co. David N. Popik

appears to have no interest in Pennington Holding Co., but is Vice-President and attorney for applicant and holds one share of its common stock. Mr. Popik testified that the factory was an "eyesore" when he purchased it; that it has been renovated and improved; that Cointreau, Ltd. has spent in excess of \$100,000.00 excluding the cost of the building; that all alcoholic beverages manufactured under the license would be boxed at the premises and shipped by railroad to a sole distributor in the State of New York; that there would be no offensive odors from which the community would suffer; and that no sign would be displayed on the building except a sign required by Federal regulations to be displayed on the door of the licensed premises. He stated, further, that some months after the building had been purchased and equipment installed, he received information from an outside source that Pennington was a dry community, but that he knew of no actual opposition until the application herein had been filed.

The Alcoholic Beverage Law contains no express provision that would prevent issuance of the Rectifier and Blender License applied for herein; nor does the Borough ordinance hereinabove quoted prevent the issuance of that license. As pointed out in the brief submitted by applicant, the governing board or body of a municipality has no power under the provisions of the Alcoholic Beverage Law to restrict the issuance of a manufacturer's license. The power to issue manufacturers' licenses resides in the Commissioner of Alcoholic Beverage Control:

"It shall be the duty of the commissioner to administer the issuance of manufacturers', wholesalers', plenary retail transit, transportation and public warehouse licenses, in accordance with this chapter." (R.S. 33:1-18)

Applicant's brief refers, further, to the third paragraph of R. S. 33:1-3, reading:

"It shall be the duty of the commissioner to supervise the manufacture, distribution and sale of alcoholic beverages in such a manner as to promote temperance and eliminate the racketeer and bootlegger."

Apparently it is argued that the Commissioner has no power to deny the present application except for reasons pertinently related to the promotion of temperance or to the elimination of the racketeer and bootlegger -- that the Commissioner may not refuse to issue a manufacturer's license because of the dry character and sentiment of the municipality concerned. I cannot agree with the contention that the powers of the Commissioner are so limited. The legislation contained within Title 33 of the Revised Statutes is intended to be remedial of abuses inherent in the liquor traffic and is, therefore, to be liberally construed. R. S. 33:1-73.

The liquor business is one peculiarly subject to strict governmental control. Franklin Stores Co. v. Burnett, 120 N.J.L. 596; Meehan v. Board of Excise Commissioners of Jersey City et al., 73 N.J.L. 382, aff'd 75 N.J.L. 557 (E. & A.); Paul v. Gloucester, 50 N.J.L. 585 (E. & A.).

Section 33:1-23 of the Revised Statutes provides that:

"It shall be the duty of the commissioner to administer and enforce this chapter....to investigate applicants .....and all licensees, and to inspect all licensed premises;.....and to do, perform, take and adopt all other acts, procedures and methods designed to insure the fair, impartial, stringent and comprehensive administration of this chapter.

"The enumeration of the above specific duties shall not be construed to limit or restrict in any way the general authority given by this chapter to the commissioner."

Revised Statutes, 33:1-39 reads, in part:

"The commissioner may make such general rules and regulations and such special rulings and findings as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages and the enforcement of this chapter, in addition thereto and not inconsistent therewith, and may alter, amend, repeal and publish the same from time to time."

The section, after enumerating subjects that may be covered by the Commissioner's rules and regulations, concludes:

"and such other matters whatsoever as are or may become necessary in the fair, impartial, stringent and comprehensive administration of this chapter."

Section 33:1-19 of the Revised Statutes places in each local issuing authority the duty of administering the issuance of all retail licenses except plenary retail transit licenses. The local issuing authority's discretionary power to deny a license application on the ground that enough licenses already are outstanding within the municipality has been upheld by the New Jersey Supreme Court. Bumball v. Burnett, 115 N. J. L. 254. In that case the opinion by Justice Parker stated that, even where a limit to the number of licenses had been fixed by municipal ordinance, "still the council, in its discretionary power to license or not to license, could stop short of that number at any point,...." To the same effect, see Board of Commissioners of Phillipsburg v. Burnett, 125 N. J. L. 157, at 161.

Section 33:1-38 of the Revised Statutes authorizes the Commissioner:

"...to order the other issuing authority to issue a license when and if, after a hearing on the appeal of an applicant therefor, the commissioner shall decide that a license was improperly refused or improperly revoked by the other issuing authority; to order the other issuing authority to suspend or revoke a license, or to forthwith terminate the suspension or cancel the revocation of a license, when and if, after a hearing on appeal, the commissioner shall reverse the decision of the other issuing authority."

The exercise of discretion by the Commissioner, on appeal, in reversing the action of a local issuing authority, whereby licenses were granted or denied, has been upheld. Board of Commissioners of Phillipsburg v. Burnett, *supra*; Conover v. Burnett, 118 N. J. L. 483.

Considering, then, the primary authority and responsibility of the local issuing authorities regarding issuance of retail licenses, under R. S. 33:1-19; and, significantly, the broad discretionary power in the Commissioner, on appeal, to reverse the local authority's action, pursuant to R. S. 33:1-38; a fortiori, where the question relates to issuance or denial of a manufacturer's license (a matter for the Commissioner's determination in the first instance), the Commissioner's power under the Alcoholic Beverage Law to exercise reasonable discretion appears, indeed, to be comprehensive.

The evidence herein satisfies me that the large majority of persons living in the small residential community of Pennington, with a population less than 1500, is unalterably opposed to the liquor traffic in any form. I believe that the issuance of a license to manufacture liquor at any place within this municipality would contravene the present and long-established public policy therein; and, further, that such issuance would not be in keeping with the best interest of the alcoholic beverage industry in New Jersey or with the objects and purposes of alcoholic beverage control in the State. I shall be pleased to consider on its merits an application by Cointreau, Ltd. for a Rectifier and Blender License in any part of the State other than in the relatively small number of traditionally dry municipalities.

I am not impressed by any equity in favor of the applicant arising from the fact that it has expended a large sum of money in connection with the premises sought to be licensed. Many of the written objections, heretofore mentioned, were received by me in December 1941. On February 9, 1942 I advised the applicant herein that I had received a very considerable number of objections, from citizens in the vicinity of Pennington, to any license for the manufacture of liquor in that community. It appears that applicant's expenditure of large sums of money was made with full knowledge that these objections had been filed and that they might result in denial of its application.

Considering all the facts and circumstances, I hereby deny the application of Cointreau, Ltd. for a Rectifier and Blender License for premises at 110 West Franklin Avenue, Pennington, New Jersey.

ALFRED E. DRISCOLL  
Commissioner.

Dated: March 12, 1943.

2. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN LICENSE APPLICATION - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

CANCELLATION PROCEEDINGS - DISMISSED.

In the Matter of Disciplinary Proceedings against  
 FRANK TUMULTY  
 T/a T-TAVERN  
 427 George Street  
 New Brunswick, N. J.,  
 Holder of Plenary Retail Consumption License C-66, issued by the Board of Commissioners of the City of New Brunswick.

CONCLUSIONS  
AND ORDER

Frank Tumulty, Pro Se.  
 Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads guilty to falsifying his application for a retail alcoholic beverage license in that he failed to acknowledge therein that he had been convicted of a crime. He endeavors to explain the concealment of the conviction, based upon his plea of guilty to maintaining a gambling house, by stating that he believed the offense constituted a misdemeanor and not a crime. Although the word "crime" has sometimes been used to designate a gross violation of

law as distinguished from a mere misdemeanor, in its broader sense it applies to any violation of law which is punished by the state in a criminal prosecution, and therefore includes misdemeanor. 16 Corpus Juris, page 51, section 2. In Re Voorhees, 32 N. J. L. 141, it was stated that the word "crime" is nomen generalissimum, and has always been considered as embracing every species of indictable offence."

It was incumbent upon the defendant-licensee, a layman, to make proper inquiry in order to ascertain if there was any legal distinction between a crime and a misdemeanor. The false answer in an application, based upon a mistaken belief, cannot be condoned, especially where defendant could have avoided his error by applying for an official ruling respecting his status. If one neglects to avail himself of this opportunity he does so at his peril.

Licensee's penalty for the false answer will be suspension of the license for ten days, less five for the guilty plea.

Petition to remove any disqualification that may exist by reason of the conviction of a crime was heard contemporaneously herewith. The plea of guilty to the charge of maintaining a gambling house on September 8, 1933 resulted in a \$500.00 fine being imposed upon the defendant-licensee. He stated that his arrest was brought about because he accepted "bets on horses" on the premises of his cigar store. The question involved is whether or not this crime involved moral turpitude.

Commercialized gambling may or may not involve moral turpitude. In Case No. 239, Bulletin 305, Item 9, it was held that the conviction of the head of a ring conducting gambling establishments, where the activities of the ring were attended by methods of violence, did involve moral turpitude. In Case No. 283, Bulletin 337, Item 14, the conviction of a "lieutenant" of the real operator of a lottery conducted on a large scale, it was held, did involve moral turpitude. So also in a case wherein it was held multiple convictions showed a reckless disregard for law warranting the conclusion that the last offense involved moral turpitude. See Re Case No. 246, Bulletin 293, Item 10; Re Case No. 145, Bulletin 468, Item 2. In the instant case none of the elements aforementioned are found. I conclude that the single crime of which defendant-licensee is convicted did not involve moral turpitude. Cf. Re Case No. 220, Bulletin 263, Item 8; Re Case No. 325, Bulletin 403, Item 4; Re Case No. 378, Bulletin 460, Item 1; Re Case No. 143, Bulletin 500, Item 6.

Affiliate proceedings were brought in the present case to cancel the license as improvidently issued because, as alleged, defendant-licensee had been convicted of a crime involving moral turpitude and hence is ineligible to hold a liquor license in this state. However, in view of the above disposition, such cancellation proceedings are dismissed.

Accordingly, it is, on this 11th day of March, 1943,

ORDERED, that Plenary Retail Consumption License C-66, heretofore issued by the Board of Commissioners of the City of New Brunswick to Frank Tumulty, trading as T-Tavern, for premises 427 George Street, New Brunswick, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 A.M. March 15, 1943, and terminating at 2:00 A.M. March 20, 1943.

ALFRED E. DRISCOLL  
Commissioner.

3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - 15 DAYS' SUSPENSION - CHARGE OF HINDERING INVESTIGATION DISMISSED.

In the Matter of Disciplinary )  
Proceedings against )

JOSEPH NUNZIATO )  
T/a JOE NUNZIATO BAR & GRILL )  
50 Gerard Avenue )  
Matawan Township, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-3, issued by the )  
Township Committee of the Township )  
of Matawan. )  
----- )

Joseph Nunziato, Pro Se.  
Abraham Merin, Esq., Attorney for the Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleaded not guilty to the following charges:

"1. On Sunday, October 18, 1942, at about 11:30 A.M., you sold, served, delivered and allowed, permitted and suffered the sale, service, delivery and consumption of alcoholic beverages, in violation of Section 3(b) of a Resolution adopted June 29, 1934 by the Township Committee of the Township of Matawan, and amended April 6, 1939, which prohibits any such activity between 3:00 A.M. and noon on Sundays.

"2. On the date and at the time aforesaid, while investigators of the Department of Alcoholic Beverage Control were investigating the possible sale and service of alcoholic beverages at your licensed premises during the aforesaid hours on Sunday, you hindered and caused the hindrance and delay, and failed to facilitate such investigation, in violation of R. S. 33:1-35."

Two ABC agents testified that on Sunday morning, October 18, 1942, they observed several men carrying brown paper bags, who apparently came from the side door of the licensed premises opening upon an alleyway. At about eleven o'clock, one of the agents entered the licensed premises through the side door and found the licensee behind the bar, placing beer bottles on ice.

The agents continued their surveillance of the premises and at about 11:30 A. M. observed one Royal Pitman as he went to the side door of the tavern. They stopped him as he emerged from the alley into the street and found that he was carrying a quart bottle of beer, which he told the agents he had just purchased from the licensee for thirty cents.

After questioning Pitman, which took a few minutes, the agents walked down the alleyway towards the side door and, when they were about twenty-five feet away, heard the door being closed and locked by someone whom they could not see. When they reached the doorway, they opened the screen door and knocked on the inner door, but received no response. They vainly attempted to gain entrance for about five minutes, calling out that they were ABC agents. One of the agents looked in through a window of the licensed premises but could not see anyone therein.

The agents returned at about 2:00 P.M., at which time they found the licensee in the premises. When they asked him why he refused them admittance earlier in the morning, he denied that he was there at the time, or that he had sold Pitman the beer.

At the hearing, Royal Pitman testified that on Sunday, October 18th, at 11:30 A.M., he knocked on the side door of the licensed premises and purchased a quart bottle of beer from the licensee for thirty cents. Pitman had made a written statement to the same effect shortly after he was apprehended. On the other hand, Nunziato still maintains that he did not sell the beer to Pitman and that he was not on the premises when the agents tried to enter. He admits that he was there at about eleven o'clock, but says that he was merely preparing to open the place; that he left shortly after the agents and did not return until twelve o'clock; and that no one was in the tavern during the interval.

Nunziato's denial that he sold Pitman the beer that morning is in clear conflict with Pitman's story and with what the agents themselves observed. Contrasting Nunziato's interest in obtaining an acquittal in the case with the lack of any apparent reason for Pitman or the agents to accuse him unjustly, I conclude that Nunziato actually made the sale in question, and hence, find him guilty as to the first charge.

The second charge, in essence, is that Nunziato refused to admit the agents when they knocked at the door of the tavern and thus hindered and delayed them in their investigation. Deliberate defiance of the authority of ABC agents while investigating the conduct of licensed premises will not be tolerated. Cf. Re J. Barnes Operating Company, Bulletin 550, Item 7. However, in the instant case, neither deliberateness nor defiance have been established. The door was not closed and locked when the agents tried to gain admittance, but while they were still some distance away. The agent who looked into the window did not see Nunziato or anyone else. There is no evidence that Nunziato knew them to be ABC agents when the door was locked, or that he was even on the premises when they tried to gain entrance. Hence, it has not been established that Nunziato displayed a lack of cooperation of the character illustrated by Re Moose, Bulletin 520, Item 3 and Re Niewinski, Bulletin 549, Item 9. It would be manifestly unfair to find Nunziato guilty on the mere conjecture that he observed Pitman being questioned by the agents, recognized them to be ABC agents and locked the door to prevent their entry into the licensed premises. Cf. Re New Elkhorn Tavern, Inc., Bulletin 301, Item 10. I therefore find Nunziato not guilty on the second charge.

As to penalty for selling alcoholic beverages during prohibited hours: Since the defendant-licensee has no previous record, I shall suspend his license for fifteen days, which is the minimum penalty for a violation of this character. Re John A. Gross Corporation, Bulletin 556, Item 6.

Accordingly, it is, on this 11th day of March, 1943,

ORDERED, that Plenary Retail Consumption License C-3, issued to Joseph Nunziato, t/a Joe Nunziato Bar & Grill, by the Township Committee of the Township of Matawan, for premises 50 Gerard Avenue, Matawan Township, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 A. M. on March 16, 1943 and terminating at 2:00 A.M. on March 31, 1943.

ALFRED E. DRISCOLL  
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SUSPENSION FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT AFTER EXPIRATION OF 20 DAYS AND CORRECTION OF ILLEGAL SITUATION - ILLEGAL SITUATION CORRECTED (SUSPENSION IN EFFECT FOR 32 DAYS) - APPLICATION TO LIFT GRANTED.

In the Matter of Disciplinary and Cancellation Proceedings against )

DEMOSTHENES E., GEORGE E. and THAMESTOCLES E. GEVAS 567 Broad Street Newark, N. J., )

CONCLUSIONS AND ORDER

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Holders of Plenary Retail Consumption License C-571, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. )

Harrison & Roche, Esqs., by John J. McDonough, Esq., Attorneys for Defendant-Licensees.

BY THE COMMISSIONER:

On February 2, 1943 I suspended the license of the defendants herein for the balance of its term, effective February 8, 1943, because, among other things, they had conducted on their licensed premises a candy, ice cream and soda fountain business contrary to the Alcoholic Beverage Law (R. S. 33:1-12(1)). In the order suspending the license, leave was given to lift the suspension after the expiration of twenty days from February 8, 1943, upon proof that the licensed premises have been satisfactorily altered to comply with the law, and that the license application has been amended to describe properly the licensed premises as so altered.

The defendants have now presented a petition to me in which it is alleged that such alterations have been completed. It also appears that the local issuing authority has granted an amendment of the license application by which the licensed premises have been delimited to cover only the rear of the defendants' premises, where no other prohibited mercantile business will be carried on. An independent investigation made by an ABC agent confirms the fact that the alterations have been completed in accordance with a plan previously approved by me and that all alcoholic beverage activity will be confined to the present licensed premises.

Since it appears that the order of February 2, 1943 has been fully complied with, and that more than twenty days have elapsed since the suspension became effective, it is, on this 11th day of March, 1943,

ORDERED, that the suspension heretofore imposed against Plenary Retail Consumption License C-571, issued to Demosthenes E., George E. and Thamestocles E. Gevas by the Municipal Board of Alcoholic Beverage Control of the City of Newark, for premises 567 Broad Street, Newark, be lifted, and the said license is hereby restored to full force and operation, effective immediately.

ALFRED E. DRISCOLL  
Commissioner.

5. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - MITIGATING CIRCUMSTANCES - 3 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against

PATRICK GALLAGHER  
1813 Atlantic Avenue  
Atlantic City, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-79, issued by the Board of Commissioners of the City of Atlantic City.

Vincent S. Haneman, Esq., Attorney for Defendant-Licensee.  
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult to the following charge:

"On or about July 21, 1942, you possessed an illicit alcoholic beverage at your licensed premises, viz., -- one 4/5th quart bottle labeled 'Four Roses Rye A Blend of Straight Whiskies', which bottle contained an alcoholic beverage which was not genuine as labeled; such possession being in violation of R. S. 33:1-50."

On July 21, 1942 an inspector employed by the Alcohol Tax Unit, Internal Revenue Department, tested forty-two opened bottles on defendant's premises and seized the bottle mentioned in the charge because it appeared to be low in proof. At the time of the seizure the bottle was one-fifth full.

Subsequent analysis by the Federal chemist disclosed that the liquor in the seized bottle was slightly lower in proof than, and contained approximately four times the amount of solids found, in a genuine sample.

Licensee testified that he had no personal knowledge of the manner in which the violation occurred. He further testified that one Jerry Metz had been employed by him as bartender for a long period prior to July 14, 1942; that, on or about the latter date, Metz left his employ and was on vacation for a period of two weeks prior to his induction into the armed forces of the United States; that Metz is now serving in the Army and was not employed by the licensee after July 14, 1942. There has been presented to me a duly verified affidavit, executed by Metz, wherein he says that on July 21, 1942, while on vacation, he entered defendant's premises, went behind the bar and helped himself to some Four Roses Whiskey; that he then poured other whiskey into the Four Roses bottle.

Despite personal innocence, the licensee, as "master of his house", must be held strictly responsible for any "refills" found in his stock of liquor. Re Agostini, Bulletin 506, Item 8; Re Solow, Bulletin 556, Item 3.

As to penalty: In Re DeRocco, Bulletin 457, Item 2, the licensee was found guilty of possessing illicit alcoholic beverages despite the fact that it satisfactorily appeared that the seized bottle had been refilled by persons other than the licensee or his

employees. In that case no penalty was imposed because of defendant's clear record and because he had never received any previous warning as to illicit liquor. Defendant herein has held a license since Repeal and has never been convicted of any previous violation. However, our file shows that, on June 29, 1937, Commissioner Burnett sent a warning letter to defendant shortly after Federal agents had found on defendant's premises four bottles of liquor, two of which did not agree in proof and two of which did not agree in acid content with genuine samples. Considering all the facts of this case, and particularly the fact that the warning letter was sent more than five years ago, I shall suspend defendant's license for a period of three days instead of the usual ten days in cases of this kind.

Accordingly, it is, on this 15th day of March, 1943,

ORDERED, that Plenary Retail Consumption License C-79, issued by the Board of Commissioners of the City of Atlantic City to Patrick Gallagher, for premises 1813 Atlantic Avenue, Atlantic City, N. J., be and the same is hereby suspended for three (3) days, commencing at 12:01 A.M. March 22, 1943, and terminating at 12:01 A.M. March 25, 1943.

ALFRED E. DRISCOLL  
Commissioner.

6. APPELLATE DECISIONS - PATERSON GRILL OWNERS ASSOCIATION v. PATERSON, GLAZER AND SPESHOCK.

PATERSON GRILL OWNERS ASSOCIATION, )  
Appellant, )  
-vs- )

MUNICIPAL BOARD OF ALCOHOLIC )  
BEVERAGE CONTROL OF THE CITY OF )  
PATERSON, IRVING GLAZER and MARY )  
SPESHOCK, )  
Respondents. )

ON APPEAL  
CONCLUSIONS AND ORDER

----- )  
MARIA WHITE, )  
Appellant, )  
-vs- )

MUNICIPAL BOARD OF ALCOHOLIC )  
BEVERAGE CONTROL OF THE CITY OF )  
PATERSON, IRVING GLAZER and MARY )  
SPESHOCK, )  
Respondents. )

----- )  
William C. Egan, Esq. )  
Lawrence Diamond, Esq. ) Attorneys for Appellants.  
George Dimond, Esq., Attorney for Respondent, Municipal Board of  
Alcoholic Beverage Control of the City of Paterson.  
Abraham Brenman, Esq., Attorney for Respondent-Licensees.

BY THE COMMISSIONER:

On August 12, 1942 the respondent Board granted the application of respondents, Irving Glazer and Mary Speshock, for transfer of their plenary retail consumption license from 130-130A Broadway to 1107 Madison Avenue, Paterson.

The appellants thereupon instituted these proceedings and hearings on all pertinent issues were had at this Department on September 30 and October 29, 1942.

Since it appeared, however, that the local Board, because of a misconception of the law, had failed to give consideration to the merits of the application, the proceedings were remanded and it was directed to pass upon (1) whether the three taverns located in the immediate vicinity of the premises to which the license was transferred were sufficient to service the needs of the residents in that neighborhood, (2) whether the applicants should have been refused the privilege of transfer since their license had been twice suspended, and (3) whether it was desirable to place another tavern in that locality because of the proximity of a defense plant and anti-aircraft encampments. The Board was further directed to certify their conclusions on these issues to me. Re Paterson Grill Owners Association et al. v. Paterson et als., Bulletin 545, Item 1.

The Board thereupon held a formal hearing and submitted the following report, unanimously approved by its three members:

"In accordance with your Conclusions and Order of December 28, 1942 and letter attached thereto, the Paterson Board of Alcoholic Beverage Control held a hearing on the application of the transfer of plenary retail consumption license of Irving Glazer and Mary Speshock from No. 130-130A Broadway to No. 1107 Madison Avenue.

"All the parties in interest were notified of such hearing and requested to be present to present arguments for and against said transfer.

"Lawrence Diamond appeared as attorney for the objectors and William C. Egan as attorney for the Paterson Grill Owners Association, Abraham Brenman appeared in behalf of the licensees, Irving Glazer and Mary Speshock.

"The Board proceeded to hear counsel and such persons present who wished to be heard, giving everyone a full and fair opportunity to present his or her argument, after which the members of the Board agreed to visit the premises and locality, so that they would have a better picture of the situation and at the same time, investigate the type of business and the tempo (temper?) of other people in the immediate vicinity as to whether the general public would be better served by the transfer of the license.

"The business, as it is now being operated by the licensees, is a combination restaurant and tavern and entirely different from that which they operated at the premises at Nos. 130-130A Broadway and from the investigation of the Commissioners, they feel, that taking into consideration the penalties imposed upon the licensees on previous occasions, that they have remedied their ways; that the argument raised by objectors as to the close proximity to the Wright Aeronautical Plant, a defense factory, is without merit, as the same is at least 1000 feet away and in no way tends to interfere with the said industry; as to the several nearby encampments of anti-aircraft squads, this is also without merit, as the same is a very small unit and is 2000 feet or more from the premises. That at the time of the issuance of the original transfer, there were three taverns in the

immediate vicinity, one of which has since moved away and that with the present transfer, there are only three there now. One of the Commissioners interrogated certain people as to the conduct of the premises since they have been operating and has received very favorable comment, bringing him to the conclusion that the granting of the said transfer is for the benefit and welfare of the general public in the neighborhood.

"We feel that we have given full consideration to all the pertinent issues and facts in this case and wish to certify that such determinations have lead to the conclusion that this transfer should be granted."

I have carefully considered all the testimony given at the appeal hearings and have reached the conclusion that it cannot be said that the Board, in granting the transfer in question, abused the discretion lodged in it to determine, in the first instance, whether to approve or deny the application. While there may be a reasonable difference of opinion on the merits of the instant application, the decision of the Board is not so arbitrary and unreasonable as to warrant a reversal of its action.

Nor is there any merit to appellants' contention that the transfer should not have been granted since the license was then under suspension. The transfer was expressly made subject to that suspension and no alcoholic beverage activity took place under the license until the full penalty had been served. Cf. Re Rubin, Bulletin 317, Item 4.

The appellants also argue that the Board was without jurisdiction to consider the application since only two of its three members were present at the meeting of August 12, 1942 at which the transfer was approved. This argument is also devoid of substance. The law is that a majority of a municipal body constitutes a sufficient quorum for official action and that, when a quorum is in session, the vote of the majority of those present is controlling. Public Service Railway Company v. General Omnibus Company, 93 N.J.L. 344 (Sup. Ct. 1919); Peter's Garage, Inc. v. Burlington, 121 N.J.L. 523 (Sup. Ct. 1939); see also American Legion v. Beverly, Bulletin 200, Item 14. In the instant case, not only was the determination made by a majority of the Board, but also such determination was later approved by all three of its constituents.

The action of the respondent Board is affirmed.

Accordingly, it is, on this 16th day of March, 1943,

ORDERED, that the petitions of appeal be and the same are hereby dismissed.

ALFRED E. DRISCOLL  
Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO PERSON ACTUALLY OR APPARENTLY INTOXICATED, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 20 - 30 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against )

HANS ERTSCHWEIGER )  
Route 31 )  
Hillsborough Township )  
P.O. R. D. 1, )  
Somerville, N. J., )

CONCLUSIONS AND ORDER

Holder of plenary Retail Consumption License C-1, issued by the Township Committee of Hillsborough Township. )  
----- )

Hans Ertschweiger, Pro Se.  
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to the following charge:

"On Thursday, February 25, 1943, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to Gustave P. Carlson, an Auxiliary Military Policeman, a person who was actually and apparently intoxicated, and allowed, permitted and suffered the consumption of alcoholic beverages by such person on the licensed premises, in violation of Rule 1 of State Regulations No. 20."

Gustave P. Carlson, a civilian employed at a Quartermaster's Sub-Depot in Somerville as an auxiliary military policeman, reported for duty at 3:00 P.M. on February 25, 1943. He was then advised not to go to work because he was under the influence of liquor. Shortly thereafter Carlson, who was then in uniform, entered defendant's premises, which are near the gate of the Sub-Depot. The licensee, it is stated, served a sandwich, a cup of coffee, and a glass of beer to him. Carlson remained on the licensed premises for about three hours and, during that time, was served six drinks of whiskey and one glass of beer by Harry Marconi, the licensee's bartender.

The evidence shows clearly that Carlson was apparently intoxicated at 4:00 P.M., when another policeman entered defendant's premises, and at 5:40 P. M., when two investigators of the A.B.C. Department arrived there. The investigators testified that Carlson was intoxicated when a drink of whiskey was served to him by the bartender in their presence.

The licensee and the bartender admit that the drinks were served, but stated that in their opinion the man in question was sober at all times during that afternoon.

Considering all the evidence, I find defendant guilty as charged.

As to penalty: The licensee is not excused by reason of the fact that he was not present when the drinks were served to the patron. The licensee is responsible for the acts of his agents and servants.

Re Hess, Bulletin 555, Item 13. The licensee appears to have no previous adjudicated record. I shall suspend the license for a period of thirty days. Cf. Re Wilson, Bulletin 551, Item 4. Any further violation by this licensee of the Rules and Regulations of the Department of Alcoholic Beverage Control, or the Control Law, may result in the revocation of his license. It is the licensee's duty to cooperate with the military authorities and to protect the men employed in or about the Depot. Liquor must not be sold to men on their way to work or to those who have not completed their day's work. It is to be hoped the defendant in this case has learned his lesson and will conduct himself accordingly.

Accordingly, it is, on this 16th day of March, 1943,

ORDERED, that Plenary Retail Consumption License C-1, issued by the Township Committee of Hillsborough Township to Hans Ertschweiger, for premises on Route 31, Hillsborough Township, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 A.M. March 22, 1943, and terminating at 2:00 A.M. April 21, 1943.

ALFRED E. DRISCOLL  
Commissioner.

8. APPELLATE DECISIONS - SILVER ARROW GRILL INC. v. PATERSON -  
APPEAL DISMISSED.

SILVER ARROW GRILL INC.,	)	
	)	
Appellant,	)	
	)	
-vs--	)	ON APPEAL
	)	ORDER
	)	
BOARD OF ALCOHOLIC BEVERAGE	)	
CONTROL OF THE CITY OF	)	
PATERSON,	)	
	)	
Respondent	)	
-----	)	

Edward H. Saltzman, Esq., Attorney for Appellant.  
George Dimond, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from an alleged revocation of appellant's plenary retail consumption license issued for premises at 168 Getty Avenue, Paterson.

On the date fixed for hearing herein, the following stipulation, signed by the attorneys for the respective parties, was submitted to me:

"It appearing from an examination of the minutes of the Board of Alcoholic Beverage Control of the City of Paterson of March 10th, 1943, that no revocation of the Plenary Retail Consumption License held by the Silver Arrow Grill, Inc. was ordered by the said Board, and that no disciplinary action was taken except to require a correction of an existing condition, to wit: resignation from the office of president and transfer of stock of said corporation by Alfred Romeo, disqualified to act under the regulations of the Board of

Alcoholic Beverage Control for the State of New Jersey in the capacity of officer or stockholder of said corporation holding a plenary retail consumption license, and it appearing that said correction has been made; and it further appearing that the alleged revocation was the basis of this appeal;

"It is hereby agreed and stipulated by and between the Legal Department of the City of Paterson representing the Board of Alcoholic Beverage Control and Edward H. Saltzman, appearing for the appellant, that the within appeal be and the same is hereby abandoned and dismissed."

It appearing from the stipulation that in fact appellant's license was not revoked and that respondent is satisfied that a proper correction has been made;

It is, on this 18th day of March, 1943,

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

*W. J. E. Mitchell*  
Commissioner.

CHECKED BY No. 5

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