

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

BULLETIN 804

MAY 26, 1948.

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

BULLETIN 804

MAY 26, 1948.

1. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

ALFRED DENNIS MURRAY &
SAMUEL PARKER
T/a MURRAY'S BAR & GRILLE
22 Sloan Street
South Orange, N. J.,

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption License C-4 issued by the Board of Trustees of the Village of South Orange.

Defendant-licensees, by Samuel Parker, Partner.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendants pleaded non vult to a charge alleging that they possessed illicit alcoholic beverages on their licensed premises, in violation of R. S. 33:1-50.

On March 31, 1948, an inspector of the Federal Alcohol Tax Unit, Internal Revenue Service, seized six bottles of whiskey on defendants' licensed premises when preliminary tests thereof indicated that the contents of the bottles were not genuine as labeled. Subsequent analysis by a Federal chemist disclosed differences in characteristics between the alcoholic beverages described on the labels and that contained in the bottles.

Defendants have no previous adjudicated record. I shall, therefore, suspend their license for a period of twenty-five days, less five days' remission for the plea entered herein, or a net suspension of twenty days. Cf. Re Hamilton Grill, Bulletin 794, Item 4.

Accordingly, it is, on this 17th day of May, 1948,

ORDERED that Plenary Retail Consumption License C-4, issued by the Board of Trustees of the Village of South Orange to Alfred Dennis Murray & Samuel Parker, t/a Murray's Bar & Grille, for premises 22 Sloan Street, South Orange, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. June 2, 1948, and terminating at 2:00 a.m. June 22, 1948.

ERWIN B. HOCK
Commissioner.

- 2. DISCIPLINARY PROCEEDINGS - FAILURE TO GIVE WRITTEN NOTICE OF CHANGE OF FACTS IN LICENSE APPLICATION - ALIENS AND NON-RESIDENTS BECAME OWNERS OF MORE THAN 10% EACH OF CORPORATE STOCK - LICENSE SUSPENDED FOR BALANCE OF TERM - LEAVE TO APPLY FOR LIFTING OF SUSPENSION OF RENEWAL LICENSE AFTER 45 DAYS IF ILLEGAL SITUATION CORRECTED.

In the Matter of Disciplinary Proceedings against)

THE ARCADE, INC.)
 5301-5305 Bergenline Avenue)
 West New York, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-66, issued by the Board of Commissioners of the Town of West New York.)

 Theodore Cohen, Esq., by Sydney Isadore Turtz, Esq., Attorney for Defendant-licensee.
 Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to charges alleging (1) that it falsely stated in its application of June 3, 1947 for its present license that certain directors and stockholders were residents of the State of New Jersey, whereas in fact and truth they were not such residents; (2) that it failed to notify the local issuing authority of a change in stockholders and directors, in violation of R. S. 33:1-34; and (3) that one of said new stockholders was a non-citizen of the United States and a non-resident of this state, and that his holding more than 10% of the shares of stock in the corporation would have prevented the issuance of a license to the corporation, because of the provisions of R. S. 33:1-25.

In defendant's application it was falsely stated that Joseph Bossolina, David Bossolina, M. Dora Nolte, and Julius Nolte, all of the stockholders and directors of said corporation at that time, were residents of the State of New Jersey, whereas in fact they were then residents of Brooklyn, New York.

On December 30, 1947, 50% of defendant's outstanding stock was sold by Joseph and David Bossolina to Theodore Lescrinier and Margaret Lescrinier, who thereupon became stockholders of the corporation and were duly elected officers and directors thereof. No notice of this change in the status of the corporation's stockholders and directors was filed as is required by R. S. 33:1-34.

Theodore Lescrinier, a German national, who owns more than 10% of the stock of the corporation, and was up until a very recent date its president and a member of its Board of Directors, is not a citizen of the United States or a country with which the United States has a reciprocal trade treaty and does not reside in New Jersey. The law provides: "No retail license shall be issued to any corporation (with exceptions not pertinent hereto), unless each owner, directly or indirectly, of more than ten per centum (10%) of its stock qualifies in all respects as an individual applicant ***," R.S. 33:1-25. Such individual applicant must be, among other things, a citizen of the United States or a country with which the United States has a

reciprocal trade treaty and a resident of the State of New Jersey. R. S. 33:1-25; Re Londa, Bulletin 693, Item 8.

None of the parties mentioned herein were residents of the State of New Jersey at the times herein specified. The Bossolinas have severed their connection with the corporation and the disqualification caused by their non-residence is, of course, cured. Theodore Lescrinier and his wife Margaret Lescrinier are non-citizens of the United States and there is no immediate prospect of their becoming citizens. Their stock has now been transferred on the books of the corporation to Mr. and Mrs. Nolte. Under the arrangement transferring the stock, however, it would appear that the Lescriniers still have a prohibited interest therein, in fact the entire beneficial interest in said stock. I cannot accept this alleged transfer as a cure of the illegal situation. In view of this finding it is unnecessary for me to determine whether Mr. and Mrs. Nolte are now bona fide residents of New Jersey, as they allege. The corporation is disqualified by reason of the Lescriniers being non-citizens. I am, under the circumstances herein, obliged to suspend the license for the balance of its term.

The owners of the stock of this corporation have, however, indicated to me a desire to sell their interest in the corporation or the business conducted by the corporation in an effort to recoup their investment. So that they may have this opportunity, I shall provide in the order entered herein that if the license held by The Arcade, Inc. be transferred to a qualified person, or if the stock of said corporation be transferred to qualified bona fide holders, thereby divesting all of the present stockholders from any interest in said license, I shall, upon petition setting forth to my satisfaction facts showing said correction, reinstate said license, providing, however, that the license shall in no case be reinstated prior to the expiration of forty-five days from the effective date of the order entered herein.

Accordingly, it is, on this 17th day of May, 1948,

ORDERED that Plenary Retail Consumption License C-66, issued for the current licensing year by the Board of Commissioners of the Town of West New York to The Arcade, Inc., for premises 5301-5305 Bergenline Avenue, West New York, be and the same is hereby suspended for the balance of its term, effective at 3:00 a.m. May 24, 1948, and any renewal of said license, if granted to a duly qualified applicant, shall continue under suspension until a further order is entered herein; and it is further

ORDERED that, in the event a correction is effected, leave is hereby given to make application to the State Commissioner of Alcoholic Beverage Control to lift said suspension, provided, however, that in no event will the suspension of a renewal of the license be lifted until a full period of forty-five days has elapsed from the effective date of said suspension.

ERWIN B. HOCK
Commissioner.

3. APPELLATE DECISIONS - STAIKER ET ALS. v. TOWNSHIP OF ROXBURY AND GOTTESMAN, CHESLER, WHITE HOUSE RESTAURANT CORPORATION AND ALBRECHT.

ISRAEL STAIKER, JOSEPH LOUGHLIN,)
KITTY FULTON, THOMAS FULTON,)
STANLEY WOZNIAK, JOHN APOSTOLIK,)
ADOLPH BACKHOUSE, CHARLES SERGEANT,)
JOHN OLIVERRA, GUY R. DAVIS, PETER)
ARENDOOSKY and JOSEPH KOZLOWSKY,)

Appellants,)

-vs-)

TOWNSHIP COMMITTEE OF THE TOWNSHIP)
OF ROXBURY, and ANNE B. GOTTESMAN,)
HARRY A. CHESLER, JR., WHITE HOUSE)
RESTAURANT CORPORATION, and JOHN)
ALBRECHT,)

Respondents)

ON APPEAL
CONCLUSIONS AND ORDER

-----)
Sidney Simandl, Esq. and Bertram M. Berla, Esq., Attorneys for)
Appellants.

Howard F. Barrett, Esq., Attorney for Respondent Township Committee.)
Frank C. Scerbo, Esq., Attorney for Respondents Gottesman and Chesler.)
Samuel C. Meyerson, Esq., Attorney for Respondent White House)
Restaurant Corporation.)

William H. Yanowski, Esq., Attorney for Respondent Albrecht.)

BY THE COMMISSIONER:

This is an appeal from the action of the respondent Township Committee in adopting an ordinance on December 12, 1946, whereby it was provided that "there shall be no more than sixteen plenary retail consumption licenses in effect in the Township at any one time", and from the subsequent granting of plenary retail consumption licenses to respondents Gottesman, Chesler, White House Restaurant Corporation and Albrecht.

Appellants, who are licensees in the Township of Roxbury, contend that there was no need for any additional licenses and seek herein to have the ordinance set aside and the four licenses cancelled.

On February 14, 1946, respondent Township Committee passed on first reading an ordinance limiting the number of plenary retail consumption licenses to eight, and shortly thereafter denied licenses of this type to respondents Gottesman and Chesler. Chesler appealed from said action, but the testimony in that case was never fully presented and his appeal is still pending and undecided. The ordinance of February 14, 1946 was never finally adopted. On December 12, 1946, as indicated above, respondent Township Committee adopted on final reading the ordinance permitting sixteen consumption licenses, and on January 9, 1947, the Township Committee granted the four licenses which are considered herein.

When the ordinance was adopted on December 12, 1946, Committeemen Stevens and Roy voted in favor of the ordinance, and Committeeman Kiernan voted against the ordinance. Committeeman Kiernan had previously been defeated for reelection and his term of office expired December 31, 1946. When the four licenses were granted on January 9, 1947, Committeemen Stevens, Roy and Utter (the latter having replaced Kiernan on January 1, 1947) voted in favor of the licenses. Each of the three present members of the Township Committee appeared at the

hearing held herein and each was examined and cross-examined at length. Committeemen Stevens and Roy testified that, after the Chesler license had been denied in the early part of 1946, numerous residents of the township expressed to them the opinion that there was need for additional consumption licenses. Both of these witnesses estimated that approximately 200 residents had expressed this opinion. Both of these witnesses have resided in Roxbury Township for more than forty-five years. Both are businessmen and there is not the slightest evidence that either of them was improperly motivated in voting to adopt the ordinance and to grant the additional licenses. While it is true that, at the hearing held on December 12, 1946, petitions containing the names of many persons opposing the adoption of the ordinance were presented and an attorney representing the Roxbury Liquor Dealers Association vigorously opposed the adoption of the ordinance, nevertheless, under the power to administer the issuance of retail licenses conferred upon them by R. S. 33:1-19, the members of the issuing authority were justified in considering the opinions expressed to them by residents of the township, as well as the opinions expressed by the objectors at the meeting.

The evidence herein shows that the Gottesman property consists of 265 acres located partly in Roxbury Township and partly in two other townships. The premises are conducted as a dude ranch. On the licensed premises there is located a three-story building approximately 200 feet long and containing twenty sleeping rooms, two dining rooms, social quarters and a dance hall. There are also many other buildings, including eight bungalows with all facilities. There is also a lake on the property. Testimony indicates that the dude ranch accommodates about 5,000 guests a year. The nearest licensed premises are located over a half-mile from the dude ranch.

The evidence shows that the Chesler premises contain about 150 acres. There is a fifty-acre lake and facilities are provided for bathing and picnics. At the time of the hearing herein there was in the course of construction a restaurant building covering approximately 22,000 square feet, which has been described as "the largest restaurant building in the State of New Jersey". The nearest licensed premises are more than a mile from Chesler's premises.

The evidence also shows that the premises operated by White House Restaurant Corporation and John Albrecht are located in close proximity to each other on Route 6. Both premises are operated as high-class restaurants. The licensed premises of appellant Loughlin are also located on Route 6, a short distance from these restaurants, but Loughlin does not conduct a restaurant. He conducts a tavern where he sells sandwiches occasionally.

In testifying as to his reasons for voting in favor of the issuance of these licenses, Committeeman Stevens testified that he believed the Gottesman and Chesler licenses were needed to take care of the large number of people who visit these premises, and that the White House and Albrecht licenses were necessary because they were issued to high-class restaurants which he felt were an asset to the community -- "something we have never had" and "something we are proud to have". Committeemen Roy and Utter testified substantially to the same effect.

It is contended in appellants' brief as to the Gottesman and Chesler licenses that their granting was illegal because of those applicants' non-compliance with Rule 1 of State Regulations No. 2 (requiring filing before advertising) in that the applications "were filed on December 16, 1946 and first advertised on December 17th". The testimony establishes that the Gottesman application was filed

December 12, 1946 and first advertised December 25, 1946. Hence as to this application, actual compliance with the Rule was had. The Chesler application was filed December 17, 1946 and first advertised on December 16, 1946 in apparent non-compliance with the Rule, but such non-compliance is not necessarily a fatal jurisdictional defect. Although denial of an application for such non-compliance might be sustained on appeal (Brost v. East Amwell, Bulletin 304, Item 1; Bennett v. Eatontown, Bulletin 409, Item 10; Korte v. Pemberton, Bulletin 581, Item 5), the granting of the application after the objectors had been heard is indicative of satisfaction of the purposes of the Rule, as set forth in Re Dunphey, Bulletin 184, Item 6, and hence impels its waiver to avoid sacrificing substance to form.

It is also contended, as to the Gottesman and Chesler licenses, that under the doctrine enunciated in Rockaway Township Tavern Association v. Rockaway and Merolle, Bulletin 714, Item 6, where a municipal issuing authority has squarely reversed its position (as here, by first denying and then granting the Gottesman and Chesler licenses), the burden is upon it convincingly to explain such reversal. However, such burden as may have rested with respondent issuing authority in respect to the Gottesman and Chesler licenses was sufficiently met by testimony in its behalf that the instant licenses were granted upon considerations of public necessity whereas the previous denials were based upon the naked fact that a quota fixed by resolution or proposed ordinance had been reached, thus making their granting "illegal".

In these cases it is not my duty to inflict or substitute my opinion upon or for the opinion of the municipal issuing authority but, rather, to determine if reasonable grounds support their action and, if so, to affirm whatever their view and irrespective of my own. Williams v. Atlantic Highlands and Rich, Bulletin 700, Item 1.

Appellants have failed to sustain the burden of proving that the action of the issuing authority was arbitrary or unreasonable. There being evidence of public need or convenience to be served by each of the licenses considered herein, the decision of respondent Township Committee will be affirmed. See Rasin et al. v. Passaic et al., Bulletin 787, Item 1; Hudson-Bergen, etc. v. Hoboken et al., Bulletin 787, Item 6.

In so far as the limitation ordinance authorizing issuance of the instant licenses is concerned, there appears to be no reason why the ordinance should be set aside. Despite the terms of the ordinance, the Township Committee has no power to issue any additional new licenses at present because of the provisions of P. L. 1947, chap. 94.

Accordingly, it is, on this 18th day of May, 1948,

ORDERED that the action of respondent Township Committee in adopting the ordinance dated December 12, 1946, and thereafter granting plenary retail consumption licenses to respondents Gottesman, Chesler, White House Restaurant Corporation, and Albrecht, be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Commissioner.

4. APPELLATE DECISIONS - STAIKER ET ALS. v. TOWNSHIP OF ROXBURY AND KAHN.

ISRAEL STAIKER, JOSEPH LOUGHLIN,)
KITTY FULTON, THOMAS FULTON,)
STANLEY WOZNIAK, JOHN APOSTOLIK,)
ADOLPH BACKHOUSE, CHARLES SERGEANT,)
JOHN OLIVERRA, GUY R. DAVIS, PETER)
ARENDOSKY and JOSEPH KOZLOWSKY,)

Appellants,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

TOWNSHIP COMMITTEE OF THE TOWNSHIP)
OF ROXBURY, and KEITH KAHN, t/a)
ANCHOR RESTAURANT,)

Respondents)

-----)
Sidney Simandl, Esq. and Bertram M. Berla, Esq., Attorneys for)
Appellants.

Howard F. Barrett, Esq., Attorney for Respondent Township Committee.)
Keith Kahn, Pro Se.

BY THE COMMISSIONER:

This is an appeal from the action of respondent Township Committee in adopting an ordinance on December 12, 1946, whereby it was provided that "there shall be no more than sixteen plenary retail consumption licenses in effect in the Township at any one time", and from the subsequent granting of a plenary retail consumption license to respondent Keith Kahn.

The action of the Township Committee in adopting the ordinance in question has been affirmed in Staiker et al. v. Roxbury and Gottesman et al., decided herewith. The license in question was granted to respondent Kahn at a meeting of the Township Committee held on February 4, 1947, at which time twelve plenary retail consumption licenses were outstanding in the township.

The evidence herein discloses that respondent Kahn filed plans and specifications with his application. Re Harris, Bulletin 183, Item 11. The plans provided for a one-story building approximately 84 feet in depth by 48 feet in width, wherein Kahn intended to conduct a high-class restaurant. The premises are located on State Highway 10, a short distance from its intersection with State Highway 6, and the nearest premises licensed for consumption are approximately three-quarters of a mile away.

In testifying as to his reason for granting the license, Committeeman Stevens stated:

"I saw his plans. I have been on the grounds, and I must say it is far superior to anything of its kind in our Township."

Committeemen Roy and Utter testified that they voted in favor of the application because the premises are to be conducted as a high-class restaurant.

Considering all the facts of this case I conclude that appellants have failed to sustain the burden of proof in establishing that the action of the issuing authority was arbitrary or unreasonable. Hence, since it appears that there is evidence of public convenience or necessity to be served, I shall affirm the action of the Township Committee in granting the license to respondent Keith Kahn. The premises in question have been completed since the hearing, and a renewal license for the present fiscal year has been issued to respondent Keith Kahn.

Accordingly, it is, on this 18th day of May, 1948,

ORDERED that the action of respondent Township Committee, in granting a plenary retail consumption license to respondent Keith Kahn, be and the same is hereby affirmed and the appeal herein be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Commissioner.

5. APPELLATE DECISIONS - STAIKER ET ALS. v. TOWNSHIP OF ROXBURY AND FRANK.

ISRAEL STAIKER, JOSEPH LOUGHLIN,)
KITTY FULTON, THOMAS FULTON,)
STANLEY WOZNIAK, JOHN APOSTOLIK,)
ADOLPH BACKHOUSE, CHARLES SERGEANT,)
JOHN OLIVERRA, GUY R. DAVIS, PETER)
ARENOSKY and JOSEPH KOZLOWSKY,)

Appellants,)

-vs-)

TOWNSHIP COMMITTEE OF THE TOWNSHIP)
OF ROXBURY, and DEAN J. and IRENE)
G. FRANK,)

Respondents)

ON APPEAL
CONCLUSIONS AND ORDER

Sidney Simandl, Esq. and Bertram M. Berla, Esq., Attorneys for Appellants.

Howard F. Barrett, Esq., Attorney for Respondent Township Committee.
Samuel C. Meyerson, Esq., Attorney for Respondents Dean J. and Irene G. Frank..

BY THE COMMISSIONER:

This is an appeal from the action of respondent Township Committee in adopting an ordinance on December 12, 1946, whereby it was provided that "there shall be no more than eight plenary retail distribution licenses in effect in the Township at any time", and from the subsequent granting of a plenary retail distribution license to respondents Dean J. and Irene G. Frank.

Appellants, who are licensees in the Township of Roxbury, contend that there was no need for the additional plenary retail distribution license and seek herein to have the ordinance set aside and the license cancelled.

The facts concerning the adoption of the ordinance dated December 12, 1946 are set forth in Staiker et al. v. Roxbury and Gottesman et al., decided herewith.

The license considered herein was granted on February 4, 1947, on plans and specifications filed with the application. Re Harris, Bulletin 183, Item 11. When the license was granted, there were five plenary retail distribution licenses outstanding in the Township of Roxbury which has a permanent population of approximately 4,500, which is somewhat increased during the summer season. In testifying as to his reason for granting the additional license, Committeeman Stevens said:.

"We knew, of course, there was not a package store in or right near Ledgewood and they told us that they were entitled to a package store in their community; and on the strength of that we granted the license."

Committeeman Roy testified that his reason for granting the license was substantially the same as that given by Committeeman Stevens.

Committeeman Utter testified:

"Well, there is only one package store in that area and I felt if the package stores were equally distributed in the Township I could not see any reason for not granting it; we had no good reason for not granting it if it was going to serve their community which I believe it will."

The evidence shows that the premises in question are on Route 6 near the Ledgewood section which is located at the intersection of Route 6 and Route 10. There is testimony that there are approximately 300 voters in the Ledgewood section. At the hearing Irene Frank testified that she and her husband intend to conduct a combination meat market, grocery store and liquor store at their premises. She testified also that they expect to obtain their customers from the nearby Ledgewood section and from a summer colony at Lake Rogeren located about a mile away. The nearest package goods store is located on Route 10 about a mile southeast of the Frank premises.

In these cases it is not my duty to inflict or substitute my opinion upon or for the opinion of the municipal issuing authority but, rather, to determine if reasonable grounds support their action and, if so, to affirm whatever their view and irrespective of my own. Williams v. Atlantic Highlands and Rich, Bulletin 700, Item 1.

Appellants have failed to sustain the burden of proving that the action of the issuing authority was arbitrary or unreasonable. There being evidence of public need or convenience to be served, the decision of respondent Township Committee will be affirmed.

In so far as the limitation ordinance is concerned, there appears to be no reason why the ordinance should be set aside. Despite the terms of the ordinance, the Township Committee has no power to issue any additional licenses at present because of the provisions of P.L. 1947, c. 94.

Accordingly, it is, on this 18th day of May, 1948,

ORDERED that the action of respondent Township Committee, in adopting the ordinance dated December 12, 1946, and thereafter granting a plenary retail distribution license to respondents Dean J. and Irene G. Frank, be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Commissioner.

6. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - FALSE ANSWER IN APPLICATION CONCERNING PREVIOUS SUSPENSION OF LICENSE - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

SOCIETY DIMUTUO SOCCORSO)
GUGLIELMO MARCONI, INC.)
45-47 N/W Cor. Third & Foundry Sts.)
Florence, N. J.,)

CONCLUSIONS AND ORDER

Holder of Club License CB-3, issued by the Township Committee of the Township of Florence.)
-----)

N. Morton Rigg, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to charges alleging (1) that it sold, served and permitted consumption of alcoholic beverages on Sunday, March 14, 1948, in violation of a municipal ordinance; and (2) that it falsely answered a question in its application for its current license, in violation of R. S. 33:1-25.

On Sunday, March 14, 1948, at about 11:50 a.m., an ABC agent, upon entering the defendant's licensed premises, observed a number of men playing cards. On a bench near to one of these men there was a glass of beer. The agent then proceeded to the barroom and observed a glass partly filled with beer in front of another man, later identified as the steward of the club. The steward admitted serving the beer in question.

Defendant failed to disclose in its application for its current license that its license had been suspended by the State Commissioner for a period of five days, effective March 24, 1941, after it had pleaded guilty to charges alleging that it sold alcoholic beverages to non-members and permitted an alien to serve alcoholic beverages. See Bulletin 451, Item 6.

Under all the circumstances, I shall suspend defendant's license for a period of twenty days, less five days' remission for the plea entered herein, or a net suspension of fifteen days.

Accordingly, it is, on this 20th day of May, 1948,

ORDERED that Club License CB-3, issued by the Township Committee of the Township of Florence to Society DiMutuo Soccorso Guglielmo Marconi, Inc., for premises 45-47 N/W Cor. Third & Foundry Streets, Florence Township, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. June 1, 1948, and terminating at 2:00 a.m. June 16, 1948.

ERWIN B. HOCK
Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against)

SARAH CHERLIN)
T/a BENSON & CO.)
327 North Broad Street)
Elizabeth 3, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-15 issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Elizabeth.)
-----)

Harry Weltchek, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded not guilty to the following charge:

"On April 13, 1948, without first having obtained a special permit so to do, you sold a case of twelve 4/5 quart bottles of Seagram's Seven Crown Blended Whiskey below the minimum consumer price published in Bulletin 795 of this Department, in violation of Rule 6 of State Regulations No. 30."

In Bulletin 795 (effective March 2, 1948, and continuing in effect to and beyond April 13, 1948) the minimum consumer price of a 4/5 quart bottle of Seagram's Seven Crown Blended Whiskey was duly established at \$4.04, with a permissible discount of 5% on case lot purchases.

On April 13, 1948, an ABC agent entered defendant's premises and spoke to Sol Spiegel, one of defendant's employees. The agent had previously been instructed that the licensee allegedly was giving the members of the Southern Club a "break" on price as regards sales. The Southern Club is an existing organization, but the agent is not a member thereof. At the hearing herein the agent testified that he told Spiegel that he was a member of the Southern Club and that he was interested in buying a case of liquor. According to the agent, Spiegel then advised him that "if you're going to get a case I can give you a break on it because Cherlin does give the boys down at the club a break." The agent testified that he said he expected about 10%, but that Spiegel said it would amount to around 8 1/2%. Thereupon Spiegel sold to the agent a full case of Seagram's Seven Crown Blended Whiskey for \$44.44. This price was \$1.62 less than the full case price of \$48.48, minus a permissible 5% discount. At the time of the sale the clerk made out a receipted bill to the Southern Club showing the sale of one case of "Seag. 7" at \$48.48, less a credit of \$4.04, making the net amount of the sale \$44.44.

The testimony set forth above clearly establishes a violation of Rule 6 of State Regulations No. 30, unless the testimony given at the hearing by Sol Spiegel and William Cherlin, a son of the defendant, is true. Both Spiegel and William Cherlin, who was also in the store at the time, testified that the agent reported to them that there had been a shortage of one bottle on a previous delivery and that the credit amounting to \$4.04 which was allowed at the time of the sale represented the price of the bottle allegedly short on a previous delivery. On cross-examination the clerk and the son of the licensee said that they had no knowledge as to the person who had made the previous sale or as to the time when the previous sale was made. If their testimony is to be believed, they merely accepted the word of a total stranger that there had been a shortage in a previous sale.

without making any further inquiry from the stranger or the club. I do not believe their testimony, especially in view of the fact that the agent testified that there was absolutely no discussion as to any alleged shortage in a previous sale. I am satisfied that the clerk sold a full case at the price of eleven bottles instead of twelve, and that the testimony given by the clerk and the son of the licensee is merely an attempt to cover up the violation committed. I find the defendant guilty as charged.

Defendant has a prior record. On January 8, 1942, her license was suspended for ten days, less five for the plea, after she had pleaded guilty to a charge of selling alcoholic beverages below the Fair Trade minimum. Re Cherlin, Bulletin 490, Item 3. On November 2, 1942, her license was suspended for a period of twenty days, less five for the plea, after she had pleaded guilty to a second charge of a similar character. Re Cherlin, Bulletin 537, Item 10. The only mitigating factor in this case is that a period of more than five years has elapsed since these prior violations occurred. Under all the circumstances I shall suspend defendant's license for a period of thirty days.

Accordingly, it is, on this 20th day of May, 1948,

ORDERED that Plenary Retail Distribution License D-13, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth to Sarah Cherlin, t/a Benson & Co., for premises 327 North Broad Street, Elizabeth, be and the same is hereby suspended for a period of thirty (30) days, commencing at 9:00 a.m. June 1, 1948, and terminating at midnight June 30, 1948.

ERWIN B. HOCK
Commissioner.

8. STATE LICENSES - NEW APPLICATIONS FILED.

Wilson Line Operating Co.

4th St. Wharf

Wilmington, Delaware

Steamer "State of Pennsylvania"

Application for Plenary Retail Transit License filed May 19, 1948.

Henrietta Packman and Samuel Packman

T/a Packman Brothers

310-316 North Indiana Ave.

Atlantic City, N. J.

Application for State Beverage Distributor's License for fiscal year commencing July 1, 1948, filed May 19, 1948.

Contract Carrier Lines, Inc.

777 Schuylkill Ave.

Philadelphia, Pa.

Application filed May 20, 1948 for transfer of Transportation License T-88 from Harry B. Rabiger and J. Albert Kramer, t/a Contract Transport Co.

Whooppee Soda Works

196 Van Winkle Ave.

Garfield, N. J.

Application filed May 20, 1948 for transfer of State Beverage Distributor's License SBD-88 from Jerlando, Maria, Maria I., Carmela and Ciro Graceffo and Sadie Graceffo Manicone, t/a Whooppee Soda Works.

Harry and Augusta Barr
T/a United Beer Distributors Co.
41-43 Centre St.
Jersey City, N. J.

Application for Transportation License filed May 20, 1948.

Schwarz-Crescent Company
72 William St.
Newark, N. J.

Application for Limited Wholesale License filed May 21, 1948.

ERWIN B. HOCK
Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF STATE REGULATIONS NO. 38 - SALE OF ALCOHOLIC BEVERAGES IN PREMISES NOT INCLUDED IN LICENSE - ILLEGAL STORAGE OF ALCOHOLIC BEVERAGES - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MARION GONDOLF)
T/a NEWTON INN)
3007 Fenwick Road)
Camden, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-154, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)

John L. Morrissey, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded guilty to charges alleging (1) sale of alcoholic beverages in original containers for off-premises consumption on Sunday, in violation of Rule 1 of State Regulations No. 38; (2) sale of alcoholic beverages from premises other than those licensed for such sale, in violation of R. S. 33:1-2; and (3) illegal storage of alcoholic beverages, in violation of Rule 25 of State Regulations No. 20.

The defendant resides at 3001 Fenwick Road, adjacent to her licensed premises. On Sunday, March 7, 1948, a few minutes before 11:00 a.m., two investigators of the State Department of Alcoholic Beverage Control observed the licensee's son and bartender entering the licensed premises at 3007 Fenwick Road and subsequently removing to the residential premises a case of bottled beer. At about 11:00 a.m. a man left the residence at 3001 Fenwick Road carrying three quart-bottles of beer. On being advised by this man that he had just purchased the beer from the licensee at her home, 3001 Fenwick Road, and paid her \$1.00, the investigators called on Mrs. Gondolf to seek an explanation. Mrs. Gondolf admitted the sale. Her residence at 3001 Fenwick Road is not part of her licensed premises. Further

investigation disclosed several cases of beer and seven cases of other alcoholic beverages in the residential premises. Mrs. Gondolf did not attempt to explain her sale of the beer, and offered as an explanation of the unlawful storage a statement that her licensed premises had been robbed last year and that she has for the last few months kept some of her stock on her residential premises for that reason.

A plenary retail consumption license permits the sale and storage of alcoholic beverages only at and on the premises licensed thereby. R. S. 33:1-12(1); State Regulations No. 20, Rule 25.

This is Mrs. Gondolf's first adjudicated violation of the Alcoholic Beverage Law. Considering all the charges, it is obvious that defendant deliberately intended to circumvent the closing-hour law. The sale of alcoholic beverages on unlicensed premises constitutes a very serious violation. I shall suspend the license for forty-five days, less five days for the plea, making a net suspension of forty days. Cf. Re Lojko, Bulletin 725, Item 4.

Accordingly, it is, on this 25th day of May, 1948,

ORDERED that Plenary Retail Consumption License C-154, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Marion Gondolf, t/a Newton Inn, for premises 3007 Fenwick Road, Camden, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. June 3, 1948; and it is further

ORDERED that, if any license be issued to this licensee or anyone else, for the premises in question, for the 1948-49 licensing year, such license shall be under suspension until 2:00 a.m. July 13, 1948.

ERWIN B. HOCK
Commissioner.

10. DISCIPLINARY PROCEEDINGS - FRONT - AIDING AND ABETTING
NON-LICENSEE TO EXERCISE RIGHTS AND PRIVILEGES OF LICENSE -
ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary
Proceedings against)

LOUIS H. COHEN, STANLEY C. HALSBAND)
and PHILIP COHEN, t/a OCEAN HOTEL)
215 Asbury Avenue)
Asbury Park, N. J.,)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consump-)
tion License C-71, issued by the)
City Council of the City of Asbury)
Park.)

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Edward M. Rothstein, Esq., Attorney for Defendant-licensees.
William F. Wood, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendants were served with charges alleging that (1) in the application filed by Louis H. Cohen and Stanley C. Halsband, dated May 20, 1947, they failed to reveal that Philip Cohen had an

interest in the license applied for and the business conducted thereunder, (2) from July 10, 1945 to September 9, 1947, Philip Cohen exercised the privileges of the successive licenses held by Louis H. Cohen and Stanley C. Halsband, and (3) during the latter period, Louis H. Cohen and Stanley C. Halsband aided and abetted Philip Cohen to exercise the privileges of their successive licenses.

Although pleading not guilty, the defendants do not dispute the factual situation disclosed by the Department's proof. The defendants concede that Philip Cohen had an undisclosed interest in the various liquor licenses for these premises between July 1945 and September 1947, when the license was placed in the names of all three parties. Philip Cohen is the father of the other two licensees. It is explained that the interest of Philip Cohen was undisclosed because of his advanced age and ill health, and that the arrangement for the issuance of the liquor license was made upon the basis of legal advice.

Despite the close family relationship of the parties, the defendants must be found guilty as charged. This is true despite the fact that there appears to have been no statutory disqualification to prevent the father from having an interest in the liquor license and business conducted thereunder and the fact that the violation was an unwitting one.

Since the unlawful situation heretofore existing has been corrected I shall, in view of the circumstances disclosed herein, impose the minimum penalty for a violation of this type, to wit, a suspension for a period of twenty days. Cf. Re Bruno, Bulletin 786, Item 5.

Accordingly, it is, on this 25th day of May, 1948,

ORDERED that Plenary Retail Consumption License C-71, issued by the City Council of the City of Asbury Park to Louis H. Cohen, Stanley C. Halsband and Philip Cohen, t/a Ocean Hotel, 215 Ocean Avenue, Asbury Park, be and the same is hereby suspended for a period of twenty (20) days, commencing at 3:00 a.m. June 1, 1948, and terminating at 3:00 a .m. June 21, 1948.

ERWIN B. HOCK
Commissioner.

11. DISCIPLINARY PROCEEDINGS - CHARGES OF FALSE ANSWER IN APPLICATION AND AIDING AND ABETTING NON-LICENSEE TO EXERCISE PRIVILEGES OF LICENSE - DEPARTMENT FAILED TO SUSTAIN BURDEN OF PROOF - CHARGES DISMISSED.

In the Matter of Disciplinary Proceedings against)

PHILIP COHEN and LOUIS H. COHEN)
T/a HOTEL STANLEY BAR & GRILL)
W/S Madison Ave. bet. 10th & 11th Sts.)
Lakewood, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-27, issued by the Township Committee of the Township of Lakewood.)

Edward M. Rothstein, Esq., Attorney for Defendant-licensees.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendants pleaded not guilty to charges alleging that (1) in the application filed by Philip Cohen, dated August 27, 1947, he failed to reveal that Louis H. Cohen had an interest in the license applied for and business conducted thereunder, (2) in said application, Philip Cohen failed to reveal that he had agreed to pay Louis H. Cohen 30% of the gross profits of the said business, (3) from October 15, 1942 to October 16, 1947, Louis H. Cohen exercised the rights and privileges of the successive licenses issued to Philip Cohen, and (4) during the latter period, Philip Cohen aided and abetted Louis H. Cohen to exercise the privileges of the licenses issued in the name of the former.

On September 23, 1947, Louis H. Cohen executed a statement under oath concerning his connection with the hotel premises, which include the licensed premises in question. From that statement, it was ambiguous whether Louis H. Cohen, who is the son of Philip Cohen, had an interest in the licensed business operated at the hotel or whether his interest was confined solely to the hotel business. At the hearing, a complete explanation was made from which it appears that, prior to October 16, 1947, when the license was placed in both names, Louis H. Cohen's interest was confined to the hotel business as distinguished from the liquor business operated thereat. The proofs are clear that until the license was transferred to both names the only person having any interest in the liquor license and business conducted thereunder was Philip Cohen, and that Louis H. Cohen's interest therein did not commence until the license was transferred to both names on October 16, 1947.

Under the circumstances, the charges will be dismissed.

Accordingly, it is, on this 25th day of May, 1948,

ORDERED that the charges herein be and the same are hereby dismissed.

Erwin E. Hoek

Commissioner.