

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

BULLETIN 585

SEPTEMBER 20, 1943

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IN THE COURT OF THE COMMONS OF GREAT BRITAIN
IN PARLIAMENT ASSEMBLED

THE PETITION OF THE
[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

IN WITNESS WHEREOF, I have hereunto set my hand and the Great Seal of Great Britain, at the City of London, this [illegible] day of [illegible] 19[illegible]

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

BULLETIN 585

SEPTEMBER 20, 1943

1. DISCIPLINARY PROCEEDINGS - LICENSE SUSPENDED FOR BALANCE OF TERM
WITH LEAVE TO PETITION TO LIFT UPON CORRECTION OF ILLEGAL
SITUATION AND EXPIRATION OF 15 DAYS - ILLEGAL SITUATION CORRECTED
AND 15 DAYS HAVING EXPIRED - APPLICATION TO LIFT GRANTED.

In the Matter of Disciplinary)
Proceedings against)
PATRICK McNICHOLAS)
6 Treat Place) ON PETITION
Newark, N. J.,) ORDER
Holder of Plenary Retail Consump-)
tion License C-861 issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)
- - - - -)

BY THE COMMISSIONER:

On August 17, 1943 I suspended the license of Patrick McNicholas for the balance of its term, effective at 2:00 A. M. August 19, 1943, after he had pleaded non vult to charges which allege, in substance, that he was a "front" for Thomas Crawley and Annie Crawley. Re McNicholas, Bulletin 581, Item 9.

In said Order leave was given to petition to lift said suspension, after fifteen days thereof had been served, upon correction of the illegal situation. Pursuant to said leave, Annie Crawley has filed a petition wherein she alleges that she is sole owner of the licensed business and that, on September 2, 1943, the Municipal Board of Alcoholic Beverage Control of the City of Newark duly transferred the license, subject to the suspension heretofore imposed, from Patrick McNicholas to Annie Crawley. The Clerk of the Board has verified the statement in the petition as to the transfer of the license.

It appearing that the unlawful situation has been corrected, and it further appearing that the fifteen days' suspension will expire on September 3, 1943, at 2:00 A.M., the suspension will be lifted effective at that time.

Accordingly, it is, on this 2nd day of September, 1943,

ORDERED, that the suspension heretofore imposed be lifted and that Plenary Retail Consumption License C-861, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby restored to full force and operation, effective September 3, 1943, at 2:00 A.M.

ALFRED E. DRISCOLL
Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALE OF ILLICIT WINE - SALE OF ALCOHOLIC BEVERAGES CONTRARY TO THE TERMS OF LICENSE, IN VIOLATION OF R. S. 33:1-2 - REBOTTLING WINE IN VIOLATION OF R.S. 33:1-78 AND R. S. 33:1-2 - 15 DAYS' SUSPENSION, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

THOMAS FIORELLO
540 - 2nd Avenue
Elizabeth, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-206 issued by the
Municipal Board of Alcoholic
Beverage Control of the City of
Elizabeth.

Thomas Fiorello, Pro Se.

Harry Castelbaum, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult to the following charges:

"1. On August 3, 1943, at about 2:30 P.M., you sold a quart of wine, and on August 4, 1943, at about 12:55 P.M., you sold a gallon of wine, such wine being illicit in both instances in that it was not manufactured pursuant to requisite license; your sales of illicit wine being in violation of R. S. 33:1-50(e).

"2. On the dates and at the times aforesaid, you sold alcoholic beverages not pursuant to or within the terms of your license as defined by R. S. 33:1-12(1), in that you sold wine in other than the original container for consumption off the licensed premises, thereby violating R. S. 33:1-2.

"3. On the dates and at the times aforesaid, you, not being the holder of any license so to do, bottled an alcoholic beverage for sale, in that you refilled for such sale a quart bottle of wine on the first occasion and a gallon bottle of wine on the second occasion, such bottling being in violation of R. S. 33:1-78 and R. S. 33:1-2."

The file discloses that, on August 3, 1943, licensee's wife, who was then tending bar in defendant's premises, sold a quart of white wine in a whiskey bottle to an ABC investigator and that, on the following day, the licensee filled a gallon bottle with white wine and sold it to the same investigator. A subsequent search of the licensed premises failed to disclose the presence of any other illicit wine.

In a letter accompanying his plea, defendant says, "I committed the violations because of the difficulty which retailers have in getting liquor and wines these days. The wine in question was the last of a batch I had made." While I appreciate the fact that retailers are now finding it difficult to obtain alcoholic beverages, I must point out the seriousness of violations of this kind. No retailer can obtain a permit to manufacture wine for resale. In fact,

he cannot obtain a permit to manufacture wine for personal consumption. Rule 2 of State Regulations No. 13. Moreover, the wine which was sold was not tax-paid wine.

As to penalty: The facts in this case are quite similar to those in Re Porcoro, Bulletin 582, Item 9. Since defendant herein has no previous adjudicated record, I shall suspend his license for fifteen days, less five days for the plea, making a net suspension of ten days. I hereby warn all licensees that, in cases of this kind hereafter arising, the penalty may be substantially increased.

Accordingly, it is, on this 2nd day of September, 1943,

ORDERED, that Plenary Retail Consumption License C-206, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth to Thomas Fiorello, for premises 540 - 2nd Avenue, Elizabeth, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A.M. September 8, 1943, and terminating at 2:00 A.M. September 18, 1943.

ALFRED E. DRISCOLL
Commissioner.

3. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN LICENSE APPLICATION
CONCEALING MATERIAL FACTS - ILLEGAL SITUATION CORRECTED - 10 DAYS'
SUSPENSION.

In the Matter of Disciplinary)
Proceedings against)

ROYAL COFFEE SHOPPE, INC.)
4714 Bergenline Avenue)
Union City, N. J.,)

CONCLUSIONS)
AND ORDER)

Holder of Plenary Retail Consump-)
tion License C-138 issued by the)
Board of Commissioners of the)
City of Union City.)
- - - - -)

Aro G. Gabriel, Esq., Attorney for Defendant-Licensee.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult to the following charge:

"In your application, filed with the Board of Commissioners of the City of Union City and upon which you obtained your current plenary retail consumption license, you, after listing the following as the stockholders in your corporation - Harry Gross 37 shares, Louis Paff, 1 share, and Frances Maurer, 1 share, falsely stated 'No' in answer to Question 24, which asks: 'Has any stockholder of the applicant corporation any beneficial interest, directly or indirectly, in the stock of any other stockholder of the applicant corporation?', whereas in truth and in fact Louis Paff and Frances Maurer were the real and beneficial owners of all of the capital stock of your company; such false statement being in violation of R.S.33:1-25."

It is admitted that, when the application was filed on June 1, 1943, Louis Paff and Frances Maurer were each the beneficial owner of

a one-half interest in the shares of stock which were listed in the name of Harry Gross, and that Harry Gross had no beneficial interest in said shares.

In December 1942, when Louis Paff and Frances Maurer became the beneficial owners of all of the shares of defendant corporation, they resided in New York City. At that time each of them was disqualified from holding more than ten per cent. of the stock of defendant corporation because they had not resided continuously for five years in the State of New Jersey. Both of them allege that the thirty-seven shares of stock were placed in the name of Harry Gross, who was a resident of New Jersey and an uncle of Louis Paff, merely for the purpose of making it appear that a "local man" was interested in the business. In any event, the answer to Question 24 in the application was false.

Defendant alleges that, since the institution of these proceedings, the unlawful situation has been corrected. Testimony was taken as to the alleged correction. It appears from this testimony that, pursuant to an agreement between the parties, Louis Paff and Harry Gross transferred their respective shares of the capital stock of defendant corporation to Frances Maurer, who is now the beneficial owner of all of the shares of stock. It further appears from the testimony that Frances Maurer has established a bona fide residence in Union City. Hence, in accordance with the provisions of R. S. 33:1-25, as amended by P. L. 1943, c. 46, she is now qualified, so far as residence is concerned, to hold any and all shares in defendant corporation so long as she continues to be a bona fide resident of this State.

In view of the plea, the correction of the unlawful situation and the absence of any prior record, I shall impose a suspension of ten days. Re Swiss Town House, Inc., Bulletin 583, Item 10.

Accordingly, it is, on this 2nd day of September, 1943,

ORDERED, that Plenary Retail Consumption License C-138, issued by the Board of Commissioners of the City of Union City to Royal Coffee Shoppe, Inc., for premises 4714 Bergenline Avenue, Union City, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 A.M. September 8, 1943, and terminating at 3:00 A. M. September 18, 1943.

ALFRED E. DRISCOLL
Commissioner.

4. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PREVIOUS RECORD -
20 DAYS' SUSPENSION.

In the Matter of Disciplinary
Proceedings against

JOSEPH DILZER
9 Oak Street
Butler, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-5 issued by the
Borough Council of the Borough of
Butler.

Joseph Dilzer, Pro Se.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The licensee pleaded non vult to a charge alleging that, on July 9, 1943, he possessed a 4/5 quart bottle of "Carstairs White Seal Blended Whiskey, 86.8 Proof"; two 4/5 quart bottles of "Wilson 'That's All' Blended Whiskey, 86.8 Proof", and one 4/5 quart bottle of "Kinsey Blended Whiskey, 86.8 Proof"; all of which contained alcoholic beverages which were not genuine as labeled, in violation of R. S. 33:1-50. He also pleaded non vult to rebottling alcoholic beverages in violation of R. S. 33:1-78.

The file discloses that a departmental investigator tested sixteen open bottles of liquor. Four of these bottles, labeled blended whiskey, were found to contain straight whiskey. The licensee stated to the investigator that he had refilled these bottles with other tax-paid liquor because he was out of stock of the brand of liquor designated by the particular labels.

The licensee has a previous record. His license was suspended for a period of five days by the municipal governing body, effective October 7, 1940, for sale of liquor on a Sunday during prohibited hours.

Where the licensee performs or authorizes or acquiesces in the performance of the "refill", the penalty must and will be severe. Re Orbach, Bulletin 406, Item 10. In the instant case the licensee deliberately perpetrated a fraud upon his customers. I shall, therefore, suspend the license for a period of twenty days.

Accordingly, it is, on this 3rd day of September, 1943,

ORDERED, that Plenary Retail Consumption License C-5, issued by the Borough Council of the Borough of Butler to Joseph Dilzer for premises 9 Oak Street, Butler, be and the same is hereby suspended for a period of twenty (20) days, commencing at 3:00 A.M. September 9, 1943, and terminating at 3:00 A.M. September 29, 1943.

ALFRED E. DRISCOLL
Commissioner.

5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS,
IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS
NO. 20 - 15 DAYS' SUSPENSION.

In the Matter of Disciplinary)
Proceedings against)

FRED KURTZ)
T/a JOHNNY'S BEER GARDEN)
1 Cooper Street)
Rockaway Borough, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-7 issued by the)
Borough Council of the Borough)
of Rockaway.)
-----)

Fred Kurtz, Pro Se.

Milton H. Cooper, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult to charges alleging, in substance, that on August 21, 1943 he sold alcoholic beverages to, and permitted the consumption of alcoholic beverages upon his licensed premises by, Homer --- and Seaman (1st Class) Harris ---, minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The charges were preferred after two ABC investigators reported that they had observed the minors consuming beer in defendant's premises. Homer --- and Seaman (1st Class) Harris --- were seventeen years and eighteen years of age respectively.

This is defendant's first adjudicated offense. The usual penalty for sale to a minor, where there are no aggravating circumstances, is ten days. However, because of the youthfulness of Homer ---, I shall increase this penalty to fifteen days. Five days will be remitted for the plea. See Re Frater, Bulletin 576, Item 2.

Accordingly, it is, on this 3rd day of September, 1943,

ORDERED, that Plenary Retail Consumption License C-7, issued by the Borough Council of the Borough of Rockaway to Fred Kurtz, t/a Johnny's Beer Garden, for premises 1 Cooper Street, Rockaway Borough, be and the same is hereby suspended for ten (10) days, commencing at 2:00 A.M. September 13, 1943, and terminating at 2:00 A.M. September 23, 1943.

ALFRED E. DRISCOLL
Commissioner.

6. ACTIVITY REPORT FOR AUGUST, 1943

To: Alfred E. Driscoll, Commissioner

ARRESTS: Licensees and employees - - - - 16 Bootleggers - - - - 11
Total number of persons arrested - - - - - 27

SEIZURES: Still - 1 to 50 gallons daily capacity- - - - - 0
50 gallons and more daily capacity - - - - - 0
Total number of stills seized- - - - - 0
Mash - gallons - - - - - 0
Motor vehicles - Trucks- - - - - 0
Passenger cars- - - - - 5
Total number of motor vehicles seized- - - - - 5
Beverage alcohol - gallons - - - - - 0
Brewed malt alcoholic beverages (beer, ale, etc.) - gallons- - - 131.40
Wine - gallons - - - - - 1.22
Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons- 36.17

RETAIL LICENSEES:
Total number of premises inspected - - - - - 1,232
Total number of bottles gauged - - - - - 9,758
Total number of premises where violations were found - - - - - 111
Total number of violations found - - - - - 150
Type of violations found:
Illicit (bootleg) liquor - 17 "Fronts" (concealed ownership)- - - 6
Gambling devices - - - - - 0 Improper beer tap markers - - - - 4
Prohibited signs - - - - - 2 Stock disposal permits necessary- -21
Unqualified employees- - - 93 Other types of violations - - - - 7

MILITARY AREA PATROL INSPECTIONS: - - - - - 476

STATE LICENSEES:
Premises inspected - - - - - 61
License applications investigated- - - - - 8

COMPLAINTS:
Investigated, reviewed and closed- - - - - 393
Investigation assigned, not yet completed- - - - - 336

LABORATORY:
Analyses made- - - - - 175
"Shake-up" cases (alcohol, water and artificial coloring)- - - - 5
Liquor found to be not genuine as labeled- - - - - 17

IDENTIFICATION BUREAU:
Criminal fingerprint identifications made- - - - - 30
Persons fingerprinted for non-criminal purposes- - - - - 554
Identification contacts with other enforcement agencies- - - - - 487
Motor vehicle identifications via N. J. State Police Teletype- - - - 10

DISCIPLINARY PROCEEDINGS:
Cases transmitted to municipalities- - - - - 23
Cases instituted at Department- - - - - 25

HEARINGS HELD AT DEPARTMENT:
Total number of hearings held- - - - - 45
Appeals- - - - - 10 Eligibility- - - - - 11
Disciplinary proceedings - - 22 Seizures - - - - - 2

PERMITS ISSUED:
Total number of permits issued - - - - - 1,391
Unqualified employees - - - - - 903
Solicitors- - - - - 37
Social affairs- - - - - 158
Home manufacture of wine- - - - - 26
Disposal of alcoholic beverages - - - - - 124
Miscellaneous permits - - - - - 143

Respectfully submitted,
Sydney B. White
Chief Inspector.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF MUNICIPAL ORDINANCE - FALSE ANSWER IN LICENSE APPLICATION - 23 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

VETERANS OF FOREIGN WARS OF THE UNITED STATES)
Mucci Post 2685)
820 Broadway)
Camden, N. J.,)

CONCLUSIONS AND ORDER

Holder of Club License CB-19 issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)

Defendant-Licensee, by Louis Naples, Commander.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee, through its Commander, pleads guilty to (1) the sale and service of alcoholic beverages on Sunday, August 1, 1943, in violation of the municipal ordinance, and (2) falsely answering a question in its application for a renewal of its license, in violation of R. S. 33:1-25.

The file discloses that investigators of this Department visited the licensed premises on Sunday evening, August 1, 1943. Drinks were refused them when they could not properly identify themselves as club members or bona fide guests of club members. While on the licensed premises, however, they observed a number of beer bottles, most of them empty, in front of several men sitting around a table. Two of the men stated that the beer had been served to them by the bartender.

An ordinance adopted by the Board of Commissioners of the City of Camden prohibits sale or service of alcoholic beverages by any licensee after 2:00 A.M. on Sundays.

In its application for renewal, defendant-licensee denied that its license had ever been suspended. The record indicates that the license of defendant was suspended by the issuing authority for three days, beginning June 23, 1938, on charge of sales to non-members. In a letter accompanying the plea, the Commander states that this violation was due merely to an oversight, since the suspension had been revealed in several previous applications.

If there were no previous record in this case, I would normally suspend the license for fifteen days on the first charge (Re Germania Mannerchor, Bulletin 570, Item 11), and for three days on the second charge (Re Booz Post No. 274 of the American Legion, Bulletin 551, Item 7). However, in view of the past record, such minimum penalties may not here be imposed. Under all of the circumstances, I shall suspend the license for a period of twenty-three days, with remission of five days for the guilty plea, or a net suspension of eighteen days.

Accordingly, it is, on this 8th day of September, 1943,

ORDERED, that Club License CB-19, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Veterans of Foreign Wars of the United States, Mucci Post #2685, for premises 820 Broadway, Camden, be and the same is hereby suspended for a period of eighteen (18) days, commencing at 2:00 A.M. September 13, 1943, and terminating at 2:00 A.M. October 1, 1943.

ALFRED E. DRISCOLL
Commissioner.

8. ELIGIBILITY - CRIME OF UNLAWFUL ENTRY MAY INVOLVE MORAL TURPITUDE - CRIME OF POSSESSING AND PASSING COUNTERFEIT UNITED STATES CURRENCY INVOLVES MORAL TURPITUDE - APPLICANT HELD NOT ELIGIBLE FOR EMPLOYMENT BY A LIQUOR LICENSEE.

September 7, 1943

Re: Case No. 506

Applicant seeks a determination of his eligibility to be employed by the holder of a New Jersey alcoholic beverage license.

In 1932 applicant pleaded guilty to a charge of "unlawful entry." He spent approximately eleven months in the Orange County, New York, jail. The crime of unlawful entry probably involves moral turpitude. Re Case No. 304, Bulletin 363, Item 7.

Again in 1938, applicant was convicted in the Federal Court for the Southern District of New York on a charge of possessing and passing counterfeit United States currency. He was sentenced to a year and a half, being released from the United States Penitentiary at Lewisburg Pa. on June 14, 1939. Possessing and passing counterfeit United States currency involves moral turpitude. Re Case No. 182, Bulletin 492, Item 8.

It is recommended that the applicant be advised that he is ineligible to be employed by the holder of a New Jersey alcoholic beverage license.

In view of the fact that applicant, who seems to have been a law-abiding citizen since his release, has not had the five year opportunity of proving his worthiness as contemplated by the statute, he cannot make application for the removal of his disqualification until after June 14, 1944.

Edward F. Hodges
Attorney.

APPROVED:

ALFRED E. DRISCOLL
Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS,
IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS
NO. 20 - 15 DAYS' SUSPENSION, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

BETTY UMBERGER
T/a CLEARWATER LODGE
Cor. Clearwater and Newton
Sparta Roads
Andover Township
R. D. 1, Newton, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-4 issued by the
Township Committee of the
Township of Andover.

William A. Dolan, Esq., Attorney for Defendant-Licensee.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult to charges alleging, in substance, that on August 21, 1943 she sold alcoholic beverages to, and permitted the consumption of alcoholic beverages by, four minors upon her licensed premises.

The file discloses that, on the evening of August 21, 1943, two ABC investigators saw a waiter serve a glass of "rum and coke" to a girl and a bottle of beer to each of three young men in the rear sitting-room of defendant's premises. Subsequent investigation disclosed that the girl was eighteen years of age, that one of the young men was nineteen years of age, and that each of the other young men was seventeen years of age.

In mitigation, defendant alleges that the waiter, who is her nephew and regularly employed elsewhere, was assisting her on this occasion because of the shortage of help. I am satisfied that the licensee, who was tending bar in another room, did not participate directly in the violation. Nevertheless, in disciplinary proceedings she must be held responsible for any violation committed by her agents or employees. Re Kurian, Bulletin 517, Item 2.

As to penalty: This is defendant's first adjudicated offense. Considering the youthfulness of two of the minors, together with all the other facts of this case, I shall suspend the license for a period of fifteen days, less five days for the plea, making a net suspension of ten days. Cf. Re Kurtz, Bulletin 585, Item 5.

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

ORDERED, that Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Andover to Betty UMBERGER, t/a Clearwater Lodge, for premises at Cor. Clearwater and Newton Sparta Roads, Andover Township, be and the same is hereby suspended for a period of ten (10) days, commencing at 7:00 A. M. September 20, 1943, and terminating at 7:00 A. M. September 30, 1943.

ALFRED E. DRISCOLL
Commissioner.

10. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS,
IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS
NO. 20 - PREVIOUS RECORD - 25 DAYS' SUSPENSION, LESS 5 FOR GUILTY
PLEA.

In the Matter of Disciplinary)
Proceedings against)

KATIE DIKET)

T/a KATIES' PLACE)

106 Billingsport Road)

Paulsboro, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-3, issued by the)
Borough Council of the Borough)
of Paulsboro.)

-----)
Katie Diket, Pro Se.

Edward F. Ambrose, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee pleads guilty to the service of alco-
holic beverages to minors, in violation of R. S. 33:1-77 and Rule 1
of State Regulations No. 20, respectively.

The file discloses that, on August 7, 1943, Doris K---, age
fifteen years, and Sara D---, seventeen years of age, were each
served a glass of wine by an employee of the defendant-licensee.

In September 1941, the local issuing authorities suspended de-
fendant's license for a period of five days after she had pleaded
guilty to a charge of selling alcoholic beverages to a minor.

The usual penalty for sale to a minor, where no aggravating
circumstances exist, is ten days. In view of the youthfulness of the
girls in the instant case and the previous adjudicated record of the
licensee, I must, following our practice, suspend the license for a
period of twenty-five days. Five days of the penalty will be
remitted because of the plea entered herein.

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

ORDERED, that Plenary Retail Consumption License C-3, issued by
the Borough Council of the Borough of Paulsboro to Katie Diket,
t/a Katies' Place, for premises 106 Billingsport Road, Paulsboro, be
and the same is hereby suspended for twenty (20) days, commencing at
1:00 A. M. September 21, 1943 and terminating at 7:00 A. M. October 11,
1943.

ALFRED E. DRISCOLL
Commissioner.

11. MORAL TURPITUDE - CRIME OF MANSLAUGHTER FOUND TO INVOLVE THE ELEMENT OF MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR MORE THAN FIVE YEARS LAST PAST AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION TO LIFT GRANTED.

In the Matter of an Application)
to Remove Disqualification be-)
cause of a Conviction, Pursuant)
to R. S. 33:1-31.2.)

CONCLUSIONS
AND ORDER

Case No. 289.
-----)

BY THE COMMISSIONER:

Petitioner comes before me to remove his disqualification because of a conviction, under and pursuant to the provisions of R. S. 33:1-31.2.

The record discloses that petitioner was born in Italy, brought to this country by his parents when he was six years old, and thereafter naturalized.

While a young man, petitioner, who seems to have worked in his father's business from the time he was physically able to do any work, was arrested several times on various charges, mostly involving assault. None of these arrests resulted in any conviction until August 1918, when he was arrested in New York State and indicted for rape and assault. At the time of his arrest he was a member of the armed forces. On September 5, 1918 he was permitted to plead guilty to assault in the third degree, which in New York State is a misdemeanor. On September 9, 1918 his sentence was suspended and he was returned to the custody of the Army, where he remained until discharged at the end of the war. The Army seems to have taken no action against him and he was honorably discharged.

The crime of which the petitioner was convicted by his plea in 1918 does not, per se, involve moral turpitude. Re Case No. 386, Bulletin 472, Item 3. However, in view of the following event, we need not here determine that question.

In 1932 the petitioner was arrested in New Jersey, charged with felonious assault with intent to kill, which charge, on the occasion of the death of the person several days later, was changed to manslaughter. After a trial, petitioner was found guilty and sentenced to eight years on February 23, 1933. He was paroled after serving four years of his term, on February 23, 1937.

The assault which resulted in the eventual charge of manslaughter was committed with a revolver. The petitioner now testifies that he was not at all responsible for the shooting, that he only handled the revolver in disarming the real assailant, and that the shot was intended for petitioner. However, the record cannot be here collaterally attacked.

Manslaughter has been defined in this State as the unlawful and felonious killing of a human being without malice expressed or implied. State v. Agnew, 10 N.J.L.J. 165. The crime involves the element of moral turpitude. See 26 Am. Jur. 166-167.

There is no record of any arrests since 1937, at which time petitioner was released from custody. Immediately upon his release, petitioner entered into business for himself. He has been married since he was eighteen, has four children and seems to provide his family with an adequate living.

Petitioner produced five witnesses as to his character and law-abiding citizenship. All but one of these witnesses knew him before his trouble with the criminal laws of the state. One of these witnesses is in the real estate and insurance business, another is in the ice business, and the other two of the four who have known him since before his conviction are employees of the county in which petitioner has been living for many years. The other witness is also employed by the county and has known petitioner for about six years. They all live within his neighborhood and all testify that they knew him both in business and socially. They testified that he is now an honest, law-abiding citizen, and that such is his reputation in the community wherein he lives. They further testify that he is a diligent, conscientious worker and supplies his family with an adequate living.

Under the discretionary authority granted me in the above cited act, I shall rule that the petitioner has conducted himself in a law-abiding manner during the last five years and since his release from the confinement occasioned by his conviction of the crime of manslaughter, and that his association with the alcoholic beverage industry will not be contrary to the public interest.

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

ORDERED, that petitioner's statutory disqualification because of the conviction described herein be and the same is hereby lifted, in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL
Commissioner.

12. DISCIPLINARY PROCEEDINGS - PERMITTING SLOT MACHINE ON LICENSED PREMISES, IN VIOLATION OF RULE 8 OF STATE REGULATIONS NO. 20 - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary
Proceedings against)

ONEIDA BOAT CLUB)
York St. & Delaware Ave.)
Burlington, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Club License CB-85,)
issued by the State Commissioner)
of Alcoholic Beverage Control.)

Budd M. Rigg, Esq., Attorney for Defendant-Licensee.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant has pleaded guilty to a charge alleging that it possessed a slot machine on its licensed premises, in violation of Rule 8 of State Regulations No. 20.

On July 23, 1943, during the course of a routine investigation, an ABC agent discovered a five-cent jackpot slot machine on the licensed premises. Since the defendant has no previous record, I shall suspend its license for the usual period of ten days, less five days for the guilty plea, leaving a net suspension of five days. Re Fairview Post No. 71, American Legion, Bulletin 576, Item 6.

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

ORDERED, that Club License CB-85, issued by the State Commissioner of Alcoholic Beverage Control to Oneida Boat Club, for premises York St. & Delaware Ave., Burlington, be and the same is hereby suspended for five (5) days, commencing at 2:00 A. M. September 20, 1943, and terminating at 2:00 A. M. September 25, 1943.

ALFRED E. DRISCOLL
Commissioner.

13. DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED -
VIOLATION OF MUNICIPAL ORDINANCE FOUND NOT TO HAVE INVOLVED MORAL
TURPITUDE - APPLICANT ADVISED THAT HE IS NOT THEREBY DISQUALIFIED.

In the Matter of an Application)
to remove Disqualification be-)
cause of a Conviction, Pursuant)
to R. S. 33:1-31.2.)

CONCLUSIONS

Case No. 293 - - - - -)

BY THE COMMISSIONER:

In 1934 petitioner was convicted on a charge of being a disorderly person, in violation of a municipal ordinance, and fined ten dollars.

Petitioner now seeks removal, pursuant to R. S. 33:1-31.2, of the statutory disqualification arising from this conviction. The question arises at the outset whether the offense of which petitioner stands convicted is a crime involving moral turpitude. If not, there is no disqualification to be removed.

An examination of the facts in this case discloses that the conviction arising out of a charge of disorderly conduct was not a conviction of a crime within the meaning of R. S. 33:1-25, 26. Re Case No. 131, Bulletin 451, Item 7, and cases cited therein. No moral turpitude, therefore, is involved in this conviction.

Apparently, petitioner was not fingerprinted at the time of his conviction in 1934 because his fingerprint returns disclose no criminal record.

I find that petitioner has never been convicted of a crime involving moral turpitude. No order, therefore, removing disqualification because of conviction, is required. Re Case No. 131, supra, and cases cited therein.

ALFRED E. DRISCOLL
Commissioner.

Dated: September 15, 1943.

14. APPELLATE DECISIONS - R. & F. INC. v. TEANECK.

R. & F. INC., a corporation)
of the State of New Jersey,)

Appellant,)

-vs-)

TOWNSHIP COUNCIL OF THE)
TOWNSHIP OF TEANECK,)

Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

Herbert F. Myers, Esq., Attorney for Appellant.
Donald M. Waesche, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the imposition of a ten-day suspension, imposed against appellant's license by respondent, after it had found the appellant guilty of selling alcoholic beverages to minors.

The sole issue on this appeal is the appellant's contention that the penalty was excessive. The appellant does not deny that alcoholic beverages were in fact sold to minors in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

It is well settled that the penalty imposed following a local disciplinary proceeding, in the first instance and within reasonable limitations, rests within the sound discretion of the municipal issuing authority. The power of the State Commissioner to reduce a penalty on appeal may properly be exercised only in those cases where the penalty imposed is manifestly unreasonable and clearly excessive. Dzieman v. Paterson, Bulletin 233, Item 10; Schmidt v. Morristown, Bulletin 457, Item 7; Gene's Pizzeria v. Bayonne, Bulletin 510, Item 11; Creston Holding Company v. Belleville, Bulletin 544, Item 2.

I have consistently recommended a suspension for a period of ten days as a proper minimum penalty to be imposed by local issuing authorities for unaggravated violations involving sales to minors. Where aggravating circumstances are involved, as for example the extreme youth of the minors or the numbers involved or where the licensee has a previous record, a much more severe penalty has been recommended.

In addition, local issuing authorities have been advised that, in the event a guilty plea is offered and accepted in advance of trial, they may, acting within their sound discretion, remit five days of the total suspension for such plea. The remission of a portion of a penalty for the reasons stated is a matter, however, that lies within the sound discretion of the issuing authority. In the instant case, although the appellant did not deny before respondent that it had sold alcoholic beverages to minors as charged, it nevertheless did not enter a plea of guilty.

Appeals to the State Commissioner must be decided squarely on the record presented on appeal. The Commissioner is not privileged to go beyond that record. In the record before me there is no evidence that the respondent was either arbitrary or unreasonable in fixing the length of the suspension at the usual minimum period of ten days. Even if the appellant had entered a formal plea of guilty

below, respondent would have been under no obligation to accept the plea and remit any portion of the penalty warranted by the nature of the offense.

The action of respondent must, on the record presented, be affirmed.

Accordingly, it is, on this 17th day of September, 1943,

ORDERED, that the petition of appeal be and the same is hereby dismissed; and it is further

ORDERED, that the ten-day suspension heretofore imposed against appellant's license by respondent, and held in abeyance pending disposition of this appeal, be and the same is hereby restored, to commence at 2:00 A. M. September 20, 1943 and terminate at 2:00 A.M. September 30, 1943.

Alfred E. Griswold
Commissioner.