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

BULLETIN 652 FEBRUARY 8, 1945

1. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - LICENSE SUSPENDED FOR A PERIOD OF 90 DAYS.

In the Matter of Disciplinary Proceedings against)

MRS. ANNA MORRISON
Cor. Route 17 and Prospect St.
Rochelle Park, N. J.,)

Holder of Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Rochelle Park, and transferred during the pendency of these proceedings to) CONCLUSIONS AND ORDER

THOMAS J. LIPUMA)

for the same premises.)

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Mrs. Anna Morrison, Defendant-Licensee, Pro Se.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleads non vult to the following charges:

"1. In your application, filed with the Township Committee of the Township of Rochelle Park and upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question 30, which asks: 'Has any individual....other than the applicant, any interest, directly or indirectly, in the license applied for, or in the business to be conducted under said license?', whereas in truth and fact Theodore Morrison was so interested in that he was the actual owner of the business; such false statement being in violation of R. S. 33:1-25.

"2. From September 25, 1944 and until the present time, you knowingly aided and abetted the said Theodore Morrison to exercise, contrary to R. S. 33:1-26, the rights and privileges of your plenary retail consumption license for the aforesaid premises, thereby yourself violating R. S. 33:1-52."

The facts disclose that in September 1944 Theodore Morrison, a resident of Spring Valley, New York, purchased the building where the licensed premises and a diner are located. Application was made for a transfer of License C-3 from the then existing licensee to Anna Morrison, the mother of Theodore Morrison. Anna Morrison also was a resident of Spring Valley, New York. Notwithstanding the fact that Anna Morrison was not a resident of New Jersey at the time her application was made and so stated in her application, a transfer of the existing license was granted to her. This was due to the fact that the Township Committee was incorrectly advised by a township

official that a retail licensee was not required to be a resident of New Jersey. As a matter of fact, neither of the Morrisons ever maintained a residence in this state.

Because of this situation, the licensee was also ordered to show cause herein why the transfer should not be cancelled and declared null and void on the grounds that it was improvidently made.

Theodore Morrison was also ineligible to hold a license in New Jersey because of conviction of a crime involving moral turpitude. It is admitted that Anna Morrison had practically no funds of her own, was incapable of operating the business and, in fact, had very little to do with the actual operation thereof, practically everything being handled by her son who, in fact, was the actual owner of the licensed business. A clear case of "front" is thus established.

Since the filing of the charges the license has been transferred to one Thomas J. LiPuma, who appears to be qualified to hold a license.

Ordinarily, the transfer of the license might be cancelled and declared null and void. However, the original error in transferring the license to Anna Morrison was made by the municipal issuing authority, as she made no misstatement concerning her place of residence in her application for the transfer. The municipal issuing authority has corrected that phase of the situation so far as it was able by subsequently transferring the license to one who, in its opinion, is qualified. Under the circumstances, no further action will be taken on the rule to show cause, and it will be dismissed.

In Bulletin 512, Item 9, I issued fair warning that in all disciplinary cases involving a "front" created or continued after June 1, 1942, the penalty would be outright revocation of the license or a suspension for such a period of time as would adequately punish the violator. In "front" cases where the real party in interest was disqualified from holding a license because of a criminal record, I have consistently imposed a suspension of ninety days. Re Figone, Bulletin 630, Item 13. This case calls for the imposition of a similar penalty. I will, therefore, suspend the license for a period of ninety days.

Accordingly, it is, on this 31st day of January, 1945,

ORDERED, that Plenary Retail Consumption License C-3, transferred by the Township Committee of the Township of Rochelle Park to Mrs. Anna Morrison, for premises on Cor. Route 17 and Prospect Street, Rochelle Park, and transferred during the pendency of these proceedings to Thomas J. LiPuma, for the same premises, be and the same is hereby suspended for a period of ninety (90) days, commencing at 3:00 a.m. February 6, 1945, and terminating at 3:00 a.m. May 7, 1945.

ALFRED E. DRISCOLL
Commissioner.

2. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION FOR LICENSE CONCEALING MATERIAL FACTS - LICENSE SUSPENDED FOR THE BALANCE OF ITS TERM.

In the Matter of Disciplinary Proceedings against

CECIL MYLOR
345 Twenty-first Avenue
Paterson, N. J.,

Holder of Plenary Retail Consumption License C-258, issued for the 1943-44 and 1944-45 fiscal years by the Board of Alcoholic Beverage Control or the City of Paterson.

CONCLUSIONS AND ORDER

James D. Ward, Esq., Attorney for Defendant-Licensee.
Edward F. Hodges, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

In October 1942 the defendant was found guilty, among other charges, of the purchase of stolen alcoholic beverages from an unlawful source in violation of Rule 15 of State Regulations No. 20, and his license was thereupon suspended for a period of sixty days. Re Mylor, Bulletin 535, Item 6. In November 1942 the defendant was criminally indicted for receiving these stolen goods. In February 1943 the defendant pleaded non vult contendere to this indictment and judgment of suspended sentence was entered thereon.

On June 4, 1943 the defendant submitted his application for renewal of his license for the 1943-44 fiscal year. Question No. 33 therein, which reads: "Have you or has any person mentioned in this application ever been convicted of any crime?", was answered by the defendant in the negative.

Thereafter, the instant proceedings were instituted by the service of a charge upon the defendant alleging that he falsified his license application by stating "No" in answer to the question whether he had "ever been convicted of any crime", whereas in truth he had been convicted on February 15, 1943 of the crime of receiving stolen goods. In addition, the defendant was called upon to show cause why his license should not be cancelled and declared null and void in view of his conviction of a crime involving moral turpitude which, under R. S. 33:1-25, mandatorily disqualified him from obtaining any liquor license in this state.

The defendant does not dispute the foregoing recital of the facts. He also concedes that the crime of receiving stolen goods (see Re Mylor, supra, for an outline of the surrounding circumstances) involves the element of moral turpitude. His not guilty plea is based solely on his contention that, under the authority of the case of State Board of Medical Examiners v. Schireson, 130 N. J. L. 570 (E. & A.) his non vult plea and sentence thereon do not constitute a "conviction" and, therefore, the pertinent question in the application was correctly answered in the negative.

The Schireson case, supra, which, incidentally, was not decided until more than three months after the defendant had executed his license application, involves the validity of an order of the State Board of Medical Examiners revoking the license of a physician upon the basis of a record disclosing pleas of non vult and

nolo contendere to various crimes involving moral turpitude. It was there held that, in collateral proceedings for the revocation of a medical license, such a record does not constitute a "conviction" within the meaning of the Medical Act therein involved. Chief Justice Brogan, writing the opinion for the Court of Errors and Appeals, summarized the holding of that case as follows (p. 575):

> "Our conclusion is that the record of the judgment and commitment of the appellant, following his plea of nolo contendere to the charges of the indictment, do not amount to a conviction of the designated crime within the contemplation of the statute, supra, and hence may not be used as such for the revocation of the appellant's license."

It should be noted that the cited decision does not hold that the appellant (Schireson) had not been convicted of the crimes in question, but merely that the criminal record of a judgment based upon a nolo contendere plea, in and of itself, is not sufficient in collateral revocation proceedings to prove a conviction "within the contemplation of the statute (Medical Act)." Indeed, it is apparent from a reading of the opinion that the court expressly recognized that, so far as the criminal proceedings against the accused are concerned, there is no distinction between a judgment following a non vult plea or one following a guilty plea. In either case, the accused stands convicted of the crime. The following is the pertinent language of the opinion on this point (p. 574):

> "In the case of Peacock v. Hudson Quarter Sessions, 46 N.J.L. 112, the issue turned upon the construction to be given the Act of 1883, Pamph. L., p. 230 (thereafter repealed by chapter 238, Pamph. L. 1898, p. 930), a supplement to an Act regulating proceedings in criminal cases, wherein it was provided that where a plea of guilty had been entered to any indictment or accusation a writ of error should not stay the proceedings upon the judgment and sentence which the court has pronounced, it was stated that a plea of nolo contendere is an implied confession of the crime of which the defendant is charged and is equivalent to a plea of guilty so far as judgment and execution in that case are concerned. 1 Burn's Just. 388; 2 Hawk. P. C. 225. It was also pointed out that the difference between this implied confession and the express confession by plea of guilty was that after the latter, 'Not guilty' might not be pleaded to an action of trespass for the same injury, whereas it might at any time be done after the former. 1 Chitty Crim. Law 293. The distinction is clear that a plea of guilty to a criminal indictment will not reserve for the wrongdoer the right to contest the issue in a civil action for the same wrong (1 Bish. Crim. Pro. § 802; 1 Wharton Amer. Crim. Law § 533; Com. v. Horton, 26 Mass. 206, 207; Com. v. Tilton, 49 Id. 232; State v. Henson, 66 N.J.L. 601, 608; compare In re Smith, 365 Ill. 11), while a plea of nolo contendere creates no such estoppel (cf. United States v. Norris, 281 U. S. 619; 74 L. Ed. 1076) but is merely an implied admission of guilt for the purposes of the instant criminal prosecution. Hudson v. United States, 272 U. S. 451; 71 L. Ed. 347; cf. 14 Am. Jur. 954, § 275; 22 C. J. S., tit. 'Criminal Law,' 658, § 425."

The rule was explicitly stated by Chancellor Walker (then Vice Chancellor) in Johnson v. Johnson, 78 N. J. Eq. 507, which involved a divorce suit on the ground of adultery. On page 510 he said:

"Now, the plea of non vult interposed by Johnson to the crime of rape is a confession amounting to a conviction."

A very recent case on the subject is Neibling v. Terry, (Mo.) 177 SW (2d) 502, 152 A.L.R. 249, in which the Missouri Supreme Court sustained disbarment proceedings against an attorney who pleaded nolo contendere to a crime involving moral turpitude. It is there said:

"'Convicted' is generally used in its broad and comprehensive sense meaning that a judgment of final condemnation has been pronounced against the accused. State v. Townley, 147 Mo 205, 48 SW 833. It is well settled that a judgment of conviction follows a plea of nolo contendere as a matter of course. White v. Crea[illegible], 175 Mass 567, 56 NE 832; State v. Suick, 195 Wis 175, 217 NW 743; Buck v. Commonwealth, 107 Pa 486; State v. LaRose, 71 NH 435, 52 A 943; United States v. Dasher (DC), 51 F Supp 805; United States v. Norris, 281 US 619, 50 S Ct. 424, 74 L ed 1076."

It follows that, so far as the proceedings upon the indictment are concerned, the defendant has been "convicted" of the crime of receiving stolen goods. When answering question No. 33 in the license application, reading, "Have you.....ever been convicted of any crime?", therefore, the defendant should have stated "Yes" and not "No."

The salutary purpose of requiring a truthful answer to the question under discussion is obvious. When an affirmative answer is given, the applicant is further obliged to state, in detail, the record of his conviction. With such information in hand, the local issuing authority is enabled to determine whether the applicant is mandatorily disqualified from holding a liquor license (see R. S. 33:1-25), or whether, in the absence of any disqualifying conviction, the applicant is a fit person to enjoy the privileges of a liquor license. By his false answer and failure to reveal his conviction, the defendant precluded any such determination by the issuing authority.

I find the defendant guilty as charged. I further find that the falsification, occurring less than four months after the conviction, was either the result of deliberate intent or gross negligence in failing to seek proper advice as to the manner in which the question in the application should have been answered. In either event, the defendant merits the full consequences of his act.

These findings might well result in an outright revocation of the defendant's license. Since, however, the only prior record against the defendant involves the disciplinary proceedings above referred to, I shall, instead of revoking the license, suspend it for the balance of its present term, viz., until June 30, 1945. Cf. Re Serra, Bulletin 608, Item 2.

Although this disposition of the charge renders unnecessary any consideration of the rule to show cause, it may be stated that, for the reasons given in Re Vesey, Bulletin 608, Item 1, it would appear that the license was improvidently issued because of the defendant's conviction of a crime involving moral turpitude. R. S. 33:1-25. Under such circumstances, the defendant is mandatorily disqualified under the Alcoholic Beverage Law from receiving any renewal of his license since he may neither hold a liquor license nor be employed upon licensed premises in this state. R. S. 33:1-25, 26.

These proceedings, which were instituted during the 1943-44 fiscal year, do not abate, but remain fully effective against the license presently held by the defendant. State Regulations No. 15. Moreover, it appears that, by appropriate resolution of the local issuing authority, the grant of the renewal license for this licensing year was expressly made subject to any penalty to be imposed in the instant proceedings.

Accordingly, it is, on this 1st day of February, 1945,

ORDERED, that Plenary Retail Consumption License C-258, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Cecil Mylor, for premises 343 Twenty-first Avenue, Paterson, be and the same is hereby suspended for the balance of its term, effective February 6, 1945, at 3:00 a.m.

ALFRED E. DRISCOLL
Commissioner.

3. ADVERTISING - HEREIN OF SPECIAL RULING - CUMBERLAND HOTEL, BRIDGETON, N. J.

February 1, 1945

Robert G. Howell, Esq.
Bridgeton, N. J.

Dear Mr. Howell:

I have your letter of January 29th replying to mine of the 16th and relating to the special ruling proposed therein collateral to the recent appeal in First Baptist Church v. Bridgeton and Cumberland Hotel (Cases No. 1 and No. 2). You state that your clients, who own the hotel and hold a plenary retail consumption license for the premises, have advised you that they will comply with the proposed ruling, subject always to re-application to the State Commissioner in the event it is ascertained that the same is working an undue hardship.

I hereby make the following special ruling, effective on Monday, February 5, 1945, at 8:00 a.m.:

> "During such time as an alcoholic beverage license shall be issued and outstanding for the Cumberland Hotel, located on the southeast corner of South Pearl and East Commerce Streets, Bridgeton, New Jersey, the licensee shall not in any manner whatsoever, either directly or indirectly, advertise the sale or service of alcoholic beverages by any sign or other device on the exterior of the East Commerce Street side of the hotel or in the interior thereof when visible from said street."

As pointed out in my letter of January 16th, the special ruling herein is subject to review, modification or vacation by the State Commissioner on application by the licensee.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

4. ACTIVITY REPORT FOR JANUARY, 1945

To: Alfred E. Driscoll, Commissioner

ARRESTS: Licensees and employees - - - - - - 2 Bootleggers - - - - - 22
Total number of persons arrested- - - - - - - - - - - - - - - - - - - -24

SEIZURES: Stills - 1 to 50 gallons daily capacity - - - - - - - - - - - - 3
50 gallons and more daily capacity- - - - - - - - - - - 3
Total number of stills seized - - - - - - - - - - - - - - - - - - 6
Mash - gallons- 990
Motor vehicles - Trucks - - - - - - - - - - - - - - - - - - - 1
Passenger cars - - - - - - - - - - - - - - - - 2
Total number of motor vehicles seized - - - - - - - - - - - - - - - 3
Beverage alcohol - gallons- 0
Brewed malt alcoholic beverages (beer, ale, etc.) - gallons - - - - 51
Wine - gallons- 62.50
Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons - - 7.50

RETAIL LICENSEES:
Total number of premises inspected- - - - - - - - - - - - - - - - 1,163
Total number of bottles gauged- - - - - - - - - - - - - - - - - -10,179
Total number of premises where violations were found- - - - - - - 78
Total number of violations found- - - - - - - - - - - - - - - - - 116
Type of violations found:

Illicit (bootleg) **liquor**	18	Improper beer tap markers	1
Gambling devices	7	Stock disposal permits necessary	10
Prohibited signs	0	No sign denoting legal sale hours, " off-premises consumption	24
Unqualified employees	47	Other types of violations	6
"Fronts" (concealed ownership)	3		

MILITARY AREA PATROL INSPECTIONS: - - - - - - - - - - - - - - - - - - - 376

STATE LICENSEES:
Premises inspected- 85
License applications investigated - - - - - - - - - - - - - - - - - 11

COMPLAINTS:
Investigated, reviewed and closed - - - - - - - - - - - - - - - - - 460
Investigation assigned, not yet completed - - - - - - - - - - - - - 243

LABORATORY:
Analyses made - 148
"Shake-up" cases (alcohol, water and artificial coloring) - - - - - 14
Liquor found to be not genuine as labeled - - - - - - - - - - - - - 18

IDENTIFICATION BUREAU:
Criminal fingerprint identifications made - - - - - - - - - - - - - 30
Persons fingerprinted for non-criminal purposes - - - - - - - - - - 140
Identification contacts with other enforcement agencies - - - - - - 174
Motor vehicle identifications via N. J. State Police Teletype - - - 13

DISCIPLINARY PROCEEDINGS:
Cases transmitted to municipalities - - - - - - - - - - - - - - - - 27
Cases instituted at Department- - - - - - - - - - - - - - - - - - - 19
Cancellation proceedings at Department- - - - - - - - - - - - - - - 1

HEARINGS HELD AT DEPARTMENT:
Total number of hearings held - - - - - - - - - - - - - - - - - - - 48

Appeals	6	Seizures	4
Disciplinary proceedings	25	Tax revocations	3
Eligibility	10		

PERMITS ISSUED:
Total number of permits issued- - - - - - - - - - - - - - - - - - - 661
Unqualified employees- - - - - - - - - - - - - - - - - - 133
Solicitors- 56
Social affairs- 122
Home manufacture of wine- - - - - - - - - - - - - - - - 63
Disposal of alcoholic beverages - - - - - - - - - - - - 126
Miscellaneous permits - - - - - - - - - - - - - - - - - 161

Respectfully submitted,
Erwin B. Hock
Deputy Commissioner.

5. POLICE - THE PRIMARY RESPONSIBILITY FOR THE ENFORCEMENT OF THE ALCOHOLIC BEVERAGE LAW AND THE STATE REGULATIONS RELATIVE TO RETAIL LICENSEES RESTS WITH THE LOCAL POLICE - HEREIN OF CONCURRENT JURISDICTION OF THE LOCAL POLICE, AGENTS OF THE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL AND OTHER LAW ENFORCEMENT OFFICERS.

February 1, 1945

My dear Chief:

In 1944, Chiefs of Police throughout the country were requested to answer a questionnaire having to do with the enforcement of the alcoholic beverage laws of the various states. One of these questionnaires was reportedly forwarded to your municipality and the answers were subsequently published in a pamphlet widely distributed.

The first question directed to the Police Chiefs was: "Is your department charged with responsibility for the enforcement of laws and regulations affecting the manufacture and sale of alcoholic beverages?" To this question the answers of all of the Police Chiefs in New Jersey whose answers were reported was "Yes", except in the case of _____, where the answer was "No."

The second question was: "If so charged, is your jurisdiction exclusive or do any other agencies of the State, County or City exercise concurrent jurisdiction for the enforcement of such laws and regulations?" In all of the answers except that of _____, Police Chiefs pointed out that concurrent jurisdiction was exercised by the local police, the Department of Alcoholic Beverage Control and other enforcement agencies. The answer to the question by _____ was again "No."

These answers, appearing in a booklet circulated throughout the United States, were not only startling -- they were embarrassing.

R. S. 33:1-71 specifically states: "local police and other enforcing agencies shall enforce (the alcoholic beverage law) in the interest of economy and effective control****". Section 71 further provides: "all officers shall use all due diligence to detect violations of (the alcoholic beverage law) and shall apprehend the offenders and make a proper complaint before a magistrate."

R. S. 33:1-24 states that it shall be the duty of municipal authorities "to enforce primarily the provisions of (the alcoholic beverage law) and the rules and regulations so far as the same pertain or refer to or are in any way connected with retail licenses, except plenary retail transit licenses****".

It is possible, of course, that the questionnaire to which I refer was answered by someone other than yourself not familiar with the Alcoholic Beverage Law. Recently, I forwarded to you the latest compilation of our laws. May I suggest that these laws should be carefully reviewed in the interest of effective local control.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

6. APPELLATE DECISIONS - ASHEN v. CARTERET.

HARRY C. ASHEN, trading as ASHEN'S SAIL INN,

Appellant,

-vs-

BOROUGH COUNCIL OF THE BOROUGH OF CARTERET,

Respondent

ON APPEAL
CONCLUSIONS AND ORDER

Benedict W. Harrington, Esq., Attorney for Appellant.
Michael Resko, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the action of the respondent adjudging appellant guilty of (1) the sale and service of alcoholic beverages to minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20; (2) suffering the licensed place of business to be conducted in such a manner as to become a nuisance, in violation of Rule 5 of State Regulations No. 20, and suspending appellant's license for the fiscal year 1943-44 for a period of ninety days.

In support of the first charge, the only testimony offered is that of two members of the police force of the Borough of Carteret. The alleged minors were not available to testify. The police officers testified that on March 29, 1944 they observed two sailors enter the appellant's licensed premises; that, when they followed them into the tavern a few minutes later, the sailors were standing at the bar and that each had a glass of beer in front of him which the licensee admitted serving. The police officers testified further that the licensee stated that the sailors had told him they were both over twenty-one years of age.

The officers insisted upon looking at the sailors' identification cards and report that these cards indicated that the sailors were respectively eighteen and nineteen years of age. While one of the officers testified that the photographs appearing on the identification cards corresponded with the appearance of the alleged minors, I have reached the conclusion that this proof, standing alone, is not legally sufficient to establish the age of the alleged minors. Proof of age and identity should be established by one of the better recognized methods, namely, by the production of a birth certificate, testimony of the minor, or the testimony of a member of the family.

The finding of the respondent that the licensee sold alcoholic beverages to minors in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20 must be reversed.

A careful study of the record leads me to the conclusion that respondent's determination that the licensee permitted and suffered his place of business to be conducted in such a manner as to become a nuisance, in violation of Rule 5 of State Regulations No. 20, is fully justified.

Police officers testified that on two occasions they found the licensee himself actually engaged in brawls with his customers. The police officers likewise testified that other disturbances on the licensed premises culminated in fights, both within and without the tavern.

In Alpine Tavern v. Newark, Bulletin 629, Item 3, I stated that the word "nuisance", as used in Rule 5 of State Regulations No. 20, was not to be restricted by technical definitions applicable in criminal cases. The word "nuisance" has been defined as a "cause or source of annoyance." I am satisfied that the appellant permitted his licensed place of business to be a cause or source of annoyance to the local authorities.

The finding of the respondent that appellant violated Rule 5 of State Regulations No. 20 is affirmed.

In view of the fact that I have reversed the respondent's decision with respect to the sales to minors, respondent's order will be modified and the suspension reduced from ninety to forty-five days.

It is noted that in 1937 appellant's license was suspended for a period of five days after he had been found guilty of selling alcoholic beverages to minors.

The suspension imposed by respondent became effective at 2:00 a.m. on June 9, 1944. When the appeal was filed herein, I entered an order dated June 12, 1944, staying respondent's order of suspension of the 1943-44 license until further order of the Commissioner. I shall now vacate my order dated June 12, 1944, and enter an order suspending the license which appellant now holds for 45 days, less the 3 days already served. See Rule 2 of State Regulations No. 15.

Accordingly, it is, on this 2nd day of February, 1945,

ORDERED, that the ninety-day suspension of Plenary Retail Consumption License C-3 issued to Harry C. Ashen, trading as Ashen's Sail Inn, by the Borough Council of the Borough of Carteret, be and the same is hereby modified to a suspension for a period of 45 days of the said license as renewed for the present fiscal year; and it is further

ORDERED, that the suspension as modified be reduced to 42 days because of the 3 days already served; and it is further

ORDERED, that the order dated June 12, 1944 is vacated effective at 2:00 a.m. February 8, 1945, and that the license now held by appellant be and the same is hereby suspended for 42 days, commencing at 2:00 a.m. February 8, 1945, and terminating at 2:00 a.m. March 22, 1945.

ALFRED E. DRISCOLL
Commissioner.

7. DISQUALIFICATION - APPLICATION TO LIFT - FACTS REEXAMINED - APPLICATION TO LIFT GRANTED.

In the Matter of an Application to Remove Disqualification because of Conviction, pursuant to R.S. 33:1-31.2

Case No. 255

On Petition for Rehearing
CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

Petitioner prays for a rehearing of his application for an order lifting his statutory disqualification because of his conviction of a crime involving moral turpitude.

On November 29, 1943 (Bulletin 597, Item 7) petitioner's previous application was denied. At that time I stated: "I am unwilling to exercise the discretionary powers vested in me by the statute".

The denial of petitioner's application was based on my conclusion that petitioner did not conduct himself in a law-abiding manner during the period following his last criminal conviction in 1936.

On November 29, 1943, petitioner was adjudged guilty in disciplinary proceedings of: (1) selling alcoholic beverages to a person actually or apparently intoxicated and permitting the consumption of the same by such person upon his licensed premises, in violation of Rule 1 of State Regulations No. 20; (2) false answer in his application for his then current license; and (3) employing a disqualified person, namely, his wife, on licensed premises in violation of R.S. 33:1-26 and Rule 1 of State Regulations No. 11.

Petitioner bases his present application on the ground that the violations were not personal to him but were imputed to him by rule of law. In disciplinary proceedings, the licensee is clearly responsible for the violations of his employees. In these proceedings, I am concerned with the personal conduct of the licensee, not, however, in a limited sense but broadly. Hence, I may, with propriety, consider his conduct as master of his tavern. Petitioner contends that notwithstanding the dereliction of others, in which he asserts he did not participate or acquiesce, resulting in the above mentioned adjudication, he at all times personally conducted himself in a law-abiding manner.

A reexamination of the evidence in the disciplinary proceedings tends to support petitioner's contention that he was not personally responsible (other than as master of his tavern) for the sale of alcoholic beverages or permitting the consumption of the same in violation of Rule 1 of State Regulations No. 20.

A further study of the evidence in the light of the arguments presented satisfies me that the petitioner honestly believed that his wife was a citizen of the United States and, hence, a qualified person for employment. His wife had been declared eligible to vote by the local authorities and did in fact vote for almost twenty years presumably upon the assumption that she was a duly qualified citizen.

The more serious question is the false answer of the petitioner in his application for his license. Questions contained in the application for a license must be honestly and correctly answered.

If this requirement is not strictly complied with, the issuing authority is deprived of its opportunity to exercise an intelligent judgment in the selection of its licensees.

In the instant case, however, it does appear that the petitioner, in his application for a license on June 8, 1934, on the advice of the then Borough Clerk, disclosed that he had been convicted of a crime involving moral turpitude in 1926 (the correct date was December 13, 1924) in the Middlesex County Court of Quarter Sessions. Despite this showing, the issuing authority, apparently without investigation, granted the petitioner a license and renewed the same from year to year, the last renewal being granted in June 1943. Subsequent to 1934, in applications apparently prepared by the Borough Clerk, although signed by the petitioner, the conviction previously referred to was not disclosed, nor did the petitioner at any time in his applications for licenses disclose his conviction in 1925 for the illegal possession of a slot machine.

In 1936 the petitioner entered a plea of non vult to an indictment charging him with the possession of illicit liquor, in violation of the Alcoholic Beverage Law. This conviction resulted in a probationary sentence of two years. While the petitioner subsequently failed to disclose this conviction in answer to Question 33 in his application, in answer to other questions the conviction was revealed. Aside from the adjudicated violations in the disciplinary proceedings in 1943 and the false answers referred to above, the effect of which is now under consideration, petitioner appears to have conducted himself in a law-abiding manner subsequent to 1936. Investigation discloses that petitioner's record from November 1943 to date is clear.

It has been my policy to hold licensees strictly accountable for false answers to the questions appearing on the applications for licenses and not to lift a statutory disqualification where false answers appear to have been given within five years of the date of the application to lift.

In the instant case, however, we have a very peculiar and unfortunate situation. Petitioner, with a very limited knowledge of English, appears to have relied upon the municipal authorities for advice and counsel and, in good faith, to have made at least a partial disclosure of his criminal record in one or more of his applications for licenses. The answers given were sufficient to put the municipality on notice that investigation of the applications, as required by R.S. 33:1-24, was in order.

If the Borough Clerk had adopted a proper procedure and refused to fill out the 1934 application for the petitioner, and if the municipality had investigated petitioner's history, it is quite possible that the false answers would not have been given or, in any event, would have been promptly corrected. This background is pertinent to the issue herein - namely, has petitioner conducted himself in a law-abiding manner for a period of at least five years subsequent to conviction of a crime involving moral turpitude.

In view of the distinguishing features in this case, the petitioner's reliance upon the advice and counsel of the Borough Clerk, his personal good conduct subsequent to my order of November 29, 1943, and my finding that he was not personally involved in the violation of Rule 1 of State Regulations No. 20, I have reached the conclusion that I may properly exercise the discretionary power vested in me and lift the statutory disqualification. I believe that the petitioner has learned his lesson and that his association with the alcoholic beverage industry will not be contrary to the public interest. In the event petitioner, at any time in the future while associated with the industry, violates either the spirit or letter of the law, he may expect stern treatment.

It should be noted that the mere lifting of the statutory disqualification does not automatically entitle the petitioner to a license. In the event the petitioner applies to the local municipality for a license, he must fully and completely disclose his previous criminal record. He must likewise disclose the cancellation of the license held by him on November 29, 1943. It will be for the issuing authority, in the event of an application for a license by petitioner, to determine whether or not petitioner is a fit and proper person to hold a liquor license.

Accordingly, it is, on this 3rd day of February, 1945,

ORDERED that petitioner's statutory disqualification resulting from the conviction of a crime or crimes involving moral turpitude, be and the same is hereby removed in accordance with the provisions of R.S. 33:1-31.2.

ALFRED E. DRISCOLL,
Commissioner.

8. DISCIPLINARY PROCEEDINGS - STATE LICENSEE - VIOLATION OF RULE 4 OF STATE REGULATIONS NO. 34 AND RULE 1 OF STATE REGULATIONS NO. 35 - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION FOR AN ORDER REINSTATING THE LICENSE UPON THE EXPIRATION OF TEN DAYS AND THE PAYMENT OF A COMPROMISE FEE.

In the Matter of Disciplinary Proceedings against JOHN A. ALLGAIR, 78-80 Main Street, Sayreville, N.J. Holder of Plenary Wholesale License W-44, issued by the State Commissioner of Alcoholic Beverage Control.	CONCLUSIONS AND ORDER

John A. Allgair, Defendant-licensee, Pro Se.
Harry Castelbaum, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant has entered a plea of non vult to the following charges:

"1. On or about April 14th, 1943 you sold to Jacob Nussman, a plenary retail distribution licensee in Phillipsburg, New Jersey, fifty cases, each containing twelve 4/5 quart bottles of 'Wilson That's All Blended Whiskey', above your listed wholesale price less permissible discount as fixed in your price list filed with this Department on September 14, 1942, in that you charged and collected $500.00 over and above such listed price less permissible discount; such sale being in violation of Rule 4 of State Regulations No. 34.

"2. On or about April 23, 1943 you gave to Earl Stuart Whitaker, holder of a solicitor's permit issued by this Department authorizing his employment by you, $125.00 as a cash bonus or other allowance over and above the salary and commission fixed by written contract of employment

between such solicitor and you, a copy of which contract you filed with this Department on November 15, 1941; such payment by you being in violation of Rule 1 of State Regulations No. 35."

The defendant's plea was accepted, for the purpose of these proceedings, as being fully equivalent to a guilty plea.

Defendant's admitted violations of the regulations were a serious threat to the orderly distribution of available supplies of alcoholic beverages during a period when an orderly and controlled market was of paramount importance. Black market activities will neither be tolerated nor condoned. The long list of criminal investigations completed by agents of the Department of Alcoholic Beverage Control demonstrates the determination of the Department to protect the citizens of the State against those who seek to take advantage of wartime restrictions.

These proceedings were held in abeyance pending the completion of related investigations and proceedings involving parties other than defendant. Those proceedings having been completed, it is appropriate that an order should now be entered in this case.

I shall suspend the defendant's wholesale license for the balance of its term, with leave reserved to the defendant to petition for a reinstatement of its license after ten (10) days of the suspension have been served and upon the payment of a compromise fee in the amount of one thousand ($1000.00) dollars. I find and therefore rule that the penalty herein imposed is most likely to insure the "fair, impartial, stringent and comprehensive administration" of the Alcoholic Beverage Law during this war period.

In view of the informal rationing system now applicable in the industry and for the purpose of protecting the source of supply to retail licensees, the defendant, upon the filing of the petition to lift the suspension and the payment of the compromise fee, will be permitted to receive alcoholic beverages at its licensed premises. However, the defendant, while its license remains under suspension, may not engage in the distribution or sale of alcoholic beverages or exercise any of its license privileges. See Re Majestic Wine & Spirits, Inc., Bulletin 600, Item 1.

Although these proceedings were instituted during the last license year, they do not bar or abate, but remain fully effective against the defendant's current license. See State Regulations No. 15.

Accordingly, it is, on this 5th day of February, 1945,

ORDERED that plenary wholesale license W-44, issued by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for the balance of its term, effective at 8:00 A.M. February 9, 1945, with leave reserved to the defendant to petition for the reinstatement of its license in accordance with the finding and special ruling set forth in the Conclusions.

ALFRED E. DRISCOLL,
Commissioner.

9. SEIZURES - CONFISCATION PROCEEDINGS - ALCOHOLIC BEVERAGES SOLD IN VIOLATION OF ALCOHOLIC BEVERAGE LAW ARE ILLICIT AND SUBJECT TO FORFEITURE.

Case No. 6432 In the Matter of the Seizure on May 6, 1943 of 360-4/5 quart bottles of whiskey at 27-29 South Main Street, in the Town of Phillipsburg, County of Warren and State of New Jersey.	On Hearing CONCLUSIONS AND ORDER

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

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes to determine whether 360-4/5 quart bottles of whiskey seized in this case, constitute unlawful property and should be forfeited.

On May 6, 1943 ABC agents seized the above described whiskey at Jacob Nussman's licensed retail liquor store located at 27-29 South Main Street, Phillipsburg. Jacob Nussman's manager, Herbert M. Carle, gave the agents a written statement that such whiskey was part of a lot of fifty cases which he had sold above ceiling prices to John R. Brown, who is interested in or associated with a licensed tavern in Easton, Pennsylvania; that Brown had from time to time removed twenty of the cases which he had purchased and that the thirty cases which were seized were the balance on hand. Nussman and his manager disclaim all interest in the whiskey.

From Carle's statement, it appears that he either knew or should have known that Brown intended to resell the whiskey at his licensed premises in Easton.

Retail licensees may sell alcoholic beverages only to members of the consuming public. Hence, sale of the whiskey to Brown was outside the scope of Nussman's plenary retail distribution license and is a violation of R.S. 33:1-2. Alcoholic beverages sold in violation of the Alcoholic Beverage Law are illicit (R.S.33:1-1(i)) and subject to forfeiture (R.S. 33:1-66).

At the statutory hearing held before this Department no one appeared to present any claim to the seized whiskey.

Accordingly, it is DETERMINED and ORDERED that the 360-4/5 quart bottles of whiskey seized in this case constitute unlawful property and that the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66 and that such whiskey be sold, in whole or in part, at public sale for the use of the State, subject to rules and regulations governing such sale, or be destroyed or retained for the use of hospitals and State, county or municipal institutions, whichever the Commissioner may hereafter determine to be for the best interest of the State.

ALFRED E. DRISCOLL,
Commissioner.

Dated: November 29, 1943

10. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES CONTRARY TO THE TERMS OF THE LICENSE, IN VIOLATION OF R.S. 33:1-2 - LICENSE SUSPENDED FOR A PERIOD OF 25 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against JACOB NUSSMAN, 27-29 So. Main Street, Phillipsburg, N.J. Holder of Plenary Retail Distribution License D-18 for the fiscal year 1943-44, and now holder of Plenary Retail Distribution License D-24 for the current fiscal year, issued by the Board of Commissioners of the Town of Phillipsburg.	CONCLUSIONS AND ORDER

Jacob Nussman, Defendant-licensee, Pro Se.
Harry Castelbaum, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant has entered a plea of guilty to the following charge:

> "On or about April 14th, 1943 you sold alcoholic beverages not pursuant to and within the terms of your plenary retail distribution license, as defined by R.S. 33:1-12(3a), in that you sold fifty cases, each containing twelve 4/5 quart bottles of 'Wilson That's All Blended Whiskey', to John R. Brown for the purpose of resale and not consumption; such sale by you thereby being in violation of R.S. 33:1-2."

This is a companion case to that reported in Bulletin 652, Item 8.

Defendant, while disavowing any personal guilt, with commendable frankness concedes "** as a licensee, it seems that I am responsible for the actions and conduct of my employees and since the sale actually did take place, I feel that it is advisable to enter a plea of 'guilty'". The licensee is indeed responsible for the conduct of his employees in their operation of the licensed business.

Violations of the character presented in the instant charge, if permitted to go unpunished, would soon destroy the entire license system. Licensees must strictly confine their activities to the privileges granted by their licenses. Those who seek to take advantage of wartime restrictions and engage in improper activities may expect stern punishment.

These proceedings were held in abeyance pending the completion of related investigations and proceedings involving parties other than defendant. Those proceedings having been completed, it is appropriate that an order should now be entered in this case.

After giving due consideration to the mitigating circumstances presented by the defendant, I have reached the conclusion that defendant's license must be suspended for a period of twenty-five (25) days. Five (5) days will be remitted for the guilty plea. While the suspension herein is somewhat longer than in the companion case, the total penalty is considerably less severe than that imposed against the wholesaler, whose disregard for the regulations materially aided defendant's employees in committing the instant violation.

Although these proceedings were instituted during the last license year, they do not bar or abate but remain fully effective against defendant's present license. See State Regulations No. 15.

Accordingly, it is, on this 5th day of February, 1945,

ORDERED that plenary retail distribution license D-24, issued by the Board of Commissioners of the Town of Phillipsburg, to Jacob Nussman, for premises 27-29 So. Main Street, Phillipsburg, New Jersey, be and the same is hereby suspended for a period of twenty (20) days, commencing at 1:00 A.M. February 13, 1945, and terminating at 1:00 A.M. March 5, 1945.

ALFRED E. DRISCOLL,
Commissioner.

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

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2.	)	CONCLUSIONS AND ORDER
Case No. 404	)	

BY THE COMMISSIONER:

On April 16, 1942, a prior petition filed by the petitioner herein was denied because of his failure to establish that he had conducted himself in a law-abiding manner during a period of at least five years prior to the decision rendered therein. See Case No. 205, Bulletin 504, Item 8. Five years having elapsed from the date of his last trouble with the police in January, 1940, petitioner has filed a new petition to remove his disqualification because of the convictions set forth in the prior proceeding.

From the evidence produced herein it appears that, subsequent to April 16, 1942, petitioner became a citizen of the United States and that since that date he has been employed in various shipyards or by contractors engaged in defense work. He has stated that, so long as the war continues, he intends to continue his employment in defense work and that he desires to have his disqualification removed merely for the purpose of becoming eligible to tend bar during his spare time.

At the hearing a municipal employee, a postmaster and the principal of a public school each testified that he has known petitioner for at least five years and that his conduct during that period of time has been law-abiding. Fingerprint records disclose that petitioner has not been convicted of any crime since May, 1938 and that he was not arrested or convicted as a result of the allegation made against him in January, 1940. Petitioner testified that he resides with his wife and two children, and that he has been steadily employed since the date of the hearing in the previous proceeding.

After considering all the evidence, I conclude that petitioner has been law-abiding for at least five years last past and that his connection with the alcoholic beverage industry will not be contrary

to the public interest. However, in view of the present shortage of manpower in defense work, I shall make a special ruling herein, under the power conferred upon me by R.S. 33:1-39, that, until further order, petitioner may not be employed on licensed premises between the hours of 9 A.M. and 5 P.M. on any weekday. The right is reserved to cancel the order entered herein if petitioner violates the special ruling.

Accordingly, it is, on this 5th day of February, 1945,

ORDERED that petitioner's statutory disqualification, because of the conviction described in Case No. 205, be lifted in accordance with the provisions of R.S. 33:1-31.2, subject to the provision as to the violation of the special ruling set forth above.

Alfred E. Driscoll
Commissioner.