

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

BULLETIN 523

AUGUST 10, 1942.

1. LICENSEES - NOT PERMITTED TO ENGAGE IN THE BUSINESS OF CASHING CHECKS - CHECK SHAVING BY LICENSEES NOT PERMISSIBLE.

July 30, 1942

Mr. David Plasky,
T/a Dave's Grill,
Camden, N. J.

My dear Mr. Plasky:

I have investigators' reports that you make a practice of cashing checks on your licensed premises, to the extent that you display a cardboard sign approximately 24" x 30" reading: "Starting Oct. 1st we are compelled to charge 20¢ for checks \$70.00 and over due to extra bank charge." The investigators report that your check cashing business is of such proportions that at times there are more than a hundred persons in line and that a police officer is stationed at the door to the kitchen of your licensed premises where the checks are cashed. In a statement to our investigators, you admitted that you engaged in the practice of cashing checks to increase your bar business, making a net profit of about \$35.00 a week from check cashing even after paying a cashier \$10.00 a week and the police officer on guard another \$5.00 per week.

Your attention is directed to the late Commissioner Burnett's ruling in Re Avenue Realty Co., Inc., Bulletin 177, Item 5, wherein it was stated:

"Deduction of a fee for cashing checks sounds more like running a bank of discount than operating a tavern. Aside from the statutes restricting banking to those duly authorized, I rule that check 'shaving' is not a permissible practice in licensed places.

"Even when done for mere accommodation and without any charge, the cashing of checks -- especially pay checks -- in taverns is not good practice. Far-sighted licensees would help themselves and the whole trade by refusing to cash any checks."

I heartily concur in the opinion expressed by my predecessor.

Under the circumstances reported by our investigators, it is clear to me that you have been engaging in a practice designed unduly to increase the consumption of alcoholic beverages, and consequently I am ruling that not only is check shaving not permissible on your licensed premises but that the business of cashing pay checks must cease forthwith.

Your pledge of future compliance with the ruling herein contained is desired by return mail.

Very truly yours,
ALFRED E. DRISCOLL,
Commissioner.

2. AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - SALE OF ALCOHOLIC BEVERAGES TO MINORS - LICENSEE PAID FINE OF \$100.00 - LICENSED PREMISES CLOSED FOR 11 DAYS - PETITION TO LIFT GRANTED.

In the Matter of the Petition by)

ANTONY DELLA ROVERE,)
T/a CLUB TONI DELLA,)
Halsey and Deerfield Roads,)
Parsippany-Troy Hills Township,)
Morris County, N. J.,)

CONCLUSIONS)
AND ORDER)

to Lift the Automatic Suspension of)
Plenary Retail Consumption License)
C-17, issued by the Township Com-)
mittee of the Township of)
Parsippany-Troy Hills.)
-----)

David Young, 3rd, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

On June 15, 1942 licensee pleaded guilty to an indictment by the Morris County Grand Jury for selling alcoholic beverages to minors in violation of R. S. 33:1-77. On the same day he was sentenced in the Morris County Court of Quarter Sessions to pay a fine of \$100.00. On June 18, 1942 investigators of this Department visited the licensed premises and picked up the license which was suspended automatically by virtue of the provisions of R. S. 33:1-31.1.

Licensee has filed a petition herein praying that the automatic suspension be lifted and the license restored.

The records of this Department disclose that the violation consisted in the sale of alcoholic beverages to three minors.

Department records indicate that the licensee has held a license since February 14, 1940, and that this is the licensee's first violation of record.

By virtue of the statutory automatic suspension, the license has already been suspended since June 18th -- a period of eleven days. Under the circumstances, that suspension appears to be adequate punishment for the violation, in view of the additional fact that the licensee has paid a fine of \$100.00.

Accordingly, it is, on this 29th day of June, 1942,

ORDERED, that the statutory automatic suspension of Plenary Retail Consumption License C-17, heretofore issued to Antony Della Rovere, t/a Club Toni Della, for premises on Halsey and Deerfield Roads, by the Township Committee of the Township of Parsippany-Troy Hills, be and the same is hereby lifted, effective at 7:00 P.M., June 29, 1942.

ALFRED E. DRISCOLL,
Commissioner.

3. DISCIPLINARY PROCEEDINGS - SALE BY CLUB LICENSEE DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE (AGGRAVATING CIRCUMSTANCES) - SALE BY CLUB LICENSEE TO NON-MEMBERS - SALE OF ALCOHOLIC BEVERAGES TO PERSONS ACTUALLY OR APPARENTLY INTOXICATED, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 20 - FALSE ANSWERS IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - PERMITTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - EMPLOYMENT OF DISQUALIFIED PERSON - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against)

SIXTH WARD DEMOCRATIC CLUB,
630-632 Kaighn Avenue (2nd Floor),
Camden, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Club License CB-23 for the fiscal year 1941-42, and now holder of Club License CB-33 for the current (1942-43) year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)

Alexander Feinberg, Esq., Attorney for Defendant-Licensee.
Emerson A. Tschupp, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were served upon the licensee alleging: (1) It falsified its license application by concealing the fact that George Ewing was the true owner of the license and the business conducted thereunder; (2) permitted George Ewing to exercise the privileges of its license; (3) sold alcoholic beverages to non-members; (4) sold alcoholic beverages during prohibited hours; (5) sold alcoholic beverages to persons actually or apparently intoxicated; and (6) employed Martin Sklar, a citizen of Roumania, without requisite permit.

Licensee pleaded guilty to charges (3) and (4), and not guilty to the remaining charges.

As to (3) and (4): The evidence discloses that on Sunday morning, March 22, 1942, at about 1:25 A.M., two A.B.C. investigators entered the club's barroom. No other patrons were then present. When the investigators inquired of the steward, Martin Sklar, where all the people were, he replied, "It's early; the place will be packed later."

Shortly after 2:00 o'clock, the hour at which the local regulation provides that all liquor sales shall stop, a steady flow of people began to enter the premises. At 2:15 A.M. there were between 50 and 75 persons there. At 3:00 A.M. the number of persons at the licensed premises increased to over 150. Between 2:00 A.M. and 3:45 A.M., when the investigators identified themselves to the steward, they were each served five drinks of liquor. Despite the fact that they were not members of the club or guests of any members, no one questioned them when they entered nor did they have any difficulty in obtaining alcoholic beverages.

During all of this time two other Department agents were keeping the premises under surveillance from the outside. They

observed that a lookout was stationed at the door allowing the patrons to enter. At about 3:45 A.M., when the agents attempted to gain admittance, they were apparently recognized by the lookout, who immediately shouted a warning into the barroom to beware of "the agents." At the same time the lights in the licensed premises started to blink, a signal that the place was being raided by the enforcement authorities. From these facts, it is clear that the Sixth Ward Democratic Club was running "high and wide", in total disregard of the law. The licensee's notorious conduct was disgraceful, its operators apparently shameless.

I have heretofore indicated the seriousness of the violations of hours regulations and sales to non-members by club licensees. In Tenth Ward Organization Republican Club of Camden, Bulletin 501, Item 6, where I revoked the license, I said:

"Clubs which are either unable or unwilling to confine their activities to the limited privileges conferred upon them by their license, should not be permitted to continue in business and compete unfairly with legitimate licensees. Such unfair competition is in large measure the direct cause of many of the evils and problems with which the industry is today confronted. Likewise, a major portion of the criticism leveled against the industry and licensees generally arises as a result of this unfair competition.

"So-called political clubs, ostensibly organized for the purpose of increasing interest in good government, reflect little credit on the political party whose name they adopt when they develop records of the type here exposed. Violations of the character herein recited by political clubs demand prompt and severe punishment. Neither the membership nor influential friends should be permitted to stand in the way of such punishment lest an already skeptical public become even more cynical. Those who would influence the course of government should be the first to obey its rules. Unfortunately, this has not always been the case."

I meant what I said. When club licensees begin to operate in manner reminiscent of the speakeasies of Prohibition days, it is time to call a halt. The most effective means of accomplishing this result is to revoke the license. That is the penalty I shall impose in this case.

Although, in view of the foregoing, it is unnecessary to pass upon the other charges, I may add that I have examined the entire record with care, and am satisfied that the club was merely the alter ego of George Ewing, who treated the liquor license as if belonging to him individually, and that, therefore, the club is guilty of charges (1) and (2). This is apparent from the testimony of the club steward, who stated:

- "Q The only monies taken in by the club were at the bar?
 A Yes.
 Q And every penny taken in at the bar you gave to Ewing?
 A That is right.
 Q So the club didn't have anything?
 A He was the club, as far as that.
 Q Ewing actually had control of all the money?
 A That is right.
 Q No other officer had control of the money; is that right?
 A That is right."

In addition, the evidence is sufficient to warrant a finding of guilt as to charges (5) and (6).

Although this proceeding was instituted during the last licensing year, which expired June 30, 1942, it does not abate but remains fully effective against the defendant's renewal license for the current (1942-43) year. State Regulations No. 15.

Accordingly, it is, on this 27th day of July, 1942,

ORDERED, that Club License CB-33, heretofore issued to Sixth Ward Democratic Club by the Municipal Board of Alcoholic Beverage Control of the City of Camden for the current fiscal year, for premises 630-632 Kaighn Avenue (2nd Floor), Camden, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL,
Commissioner.

4. MORAL TURPITUDE - CRIME OF RECEIVING STOLEN GOODS INVOLVES MORAL TURPITUDE.

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

In the Matter of an Application)
to Remove Disqualification be-)
cause of a Conviction, pursuant)
to R. S. 33:1-31.2.)
Case No. 233)
- - - - -)

CONCLUSIONS
AND ORDER

Frank S. Farley, Esq., Attorney for Applicant.

BY THE COMMISSIONER:

Petitioner in this proceeding prays that his disqualification, resulting from convictions of certain crimes hereinafter enumerated, be lifted pursuant to R. S. 33:1-31.2.

On December 29, 1919 petitioner was found guilty of receiving stolen goods and sentenced to from three to nine years in the New Jersey State Penitentiary, of which sentence he served two years and was then paroled.

On November 18, 1936 petitioner entered a retraxit plea of non vult to possession of illicit alcoholic beverages and bottling alcoholic beverages without a license. For this offense he received a suspended sentence.

At the hearing, a businessman, a sexton of the synagogue at which petitioner is a consistent attendant, and a high public official appeared as character witnesses for the petitioner. All three stated that the petitioner is highly respected in his community and bears a fine reputation for honesty and being an upright citizen. All of these witnesses have known the petitioner for at least twenty-five years: All testified that for the five years last past petitioner has worked for his daughter in the millinery business and that petitioner has lived a normal, law-abiding life. Further testimony

disclosed that petitioner has been very active in civic and charitable work and has been engaged in civilian defense work since its inception. Departmental records disclose that the petitioner's parole office gives him a very fine recommendation and was high in its praise as to his conduct during the time he was under its jurisdiction.

The crime of receiving stolen goods involves moral turpitude. This being the fact, petitioner is disqualified.

However, it appears from the evidence that petitioner's record is clear, that petitioner has not been in any trouble of any nature for the last five years, and that there are no investigations pending against him. He is and has been leading a respectable and law-abiding life.

I therefore conclude that petitioner's association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 27th day of July, 1942,

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

ALFRED E. DRISCOLL,
Commissioner.

5. LICENSE APPLICATION HEARING - BRANCH 13, AMERICAN FEDERATION OF HOSIERY WORKERS - LICENSE ISSUED.

In the Matter of the Application)
of)
BRANCH 13, AMERICAN FEDERATION)
OF HOSIERY WORKERS,)
for a Club License for premises)
located on the northerly side of)
Towaco-Pine Brook Road, Montville)
Township, N. J.)
-----)

CONCLUSIONS

Beam & Kelley, Esqs., by Joseph J. Maraziti, Esq.,
Attorneys for Applicant.

BY THE COMMISSIONER:

This application for a club license is made to the Commissioner because one of the Township Committeemen is a member of applicant organization. R. S. 33:1-20.

Applicant failed to produce a copy of a resolution of the Township Committee of Montville stating that the Committee did not oppose the granting of the license. See Bulletin 75, Item 13. The failure to present a copy of a favorable resolution would be sufficient cause for denial if the refusal of the local issuing authority was based on reasonable grounds. Re Cranford Veterans, Bulletin 126, Item 11. In order to determine whether the refusal was reasonable, a hearing was held at the offices of this Department on June 12, 1942.

At the hearing no one appeared to oppose the granting of the license.

It appears that before the application was filed with this Department, the President of Branch 13 applied to the Township Committee of Montville to adopt a resolution stating that it did not oppose the granting of the license. The Committee refused to act for the stated reason that an ordinance of the Township limits the number of club licenses to one, which had been previously issued to another organization. Subsequently, on June 8, 1942, the Township Committee of Montville adopted a resolution wherein it stated that it objected to the issuance of the license in question for reasons which may be summarized as follows:

(1) Applicant is not qualified to hold a club license because it cannot meet the requirements set forth in Rule 2 of State Regulations No. 7.

(2) The location of the premises is "not in the section of the Township desired by the governing body" and many objections have been made by citizens of the Township.

(3) Applicant is not a club of the Township of Montville but of Boonton, N. J.

(4) There are a sufficient number of licenses in the Township.

(5) The ordinance of the Township of Montville limits the number of club licenses to one and at present one club license has been issued by the governing body of the Township.

As to (1): The evidence produced by applicant at the hearing shows that, since July 1915, it has been chartered as a branch of the American Federation of Hosiery Workers, affiliated with the Congress of Industrial Organizations. There is testimony that the purposes of the American Federation of Hosiery Workers include the advancement of the social and economic welfare of workers employed in the hosiery industry and that the purposes of applicant include the "fraternal, social and recreational" interests of its members. Applicant, which has a membership of about 800, has been in exclusive and continuous possession of a clubhouse at 103 Church Street, Boonton, N. J., for at least six years last past. There is testimony that at least 200 of its members reside in Montville Township. On the evidence presented, I find that applicant is qualified to hold a club license.

As to (2): The premises sought to be licensed consist of the basement and first floor of a two-story frame building and also a tract of about twenty-five acres of land upon which the building is situated. The property is located on the north side of Towaco-Pine Brook Road, Montville Township. It was purchased by appellant in September 1941 to be used for the recreational purposes of its members. This property is located in a rural section. All of the adjacent properties consist of large farms. Thus, the present case is distinguished from Re Passaic Elks, Bulletin 95, Item 4; Re Cranford Veterans, supra, and Re Manasquan River Yacht Club, Bulletin 190, Item 11, in each of which cases the clubhouse was located in a residential section. No objectors appeared at the hearing and there is no proof before me that any objections have been made to members of the Township Committee.

As to (3): There is nothing in the rules which requires applicant to be a "club of the Township of Montville." However, if such a test were required, it appears that applicant owns premises in the Township and that 200 of its members reside there. The case is distinguished from Gesang v. Montville, Bulletin 453, Item 10, because it appeared in the latter case that appellant therein was ineligible to obtain a club license.

As to (4): This objection would carry great weight if the application was for a consumption or distribution license. The object of a club license, however, is not to supply the needs of the neighborhood. The holder of such a license cannot lawfully serve the public. The stated objection carries no weight so far as a club license is concerned. Irish American v. Kearny, Bulletin 293, Item 11.

As to (5): In Re Deull, Bulletin 234, Item 7, Commissioner Burnett said:

"I am not at all impressed with the numerical limitation of a single club license. If a club is really bona fide and is not operated for commercial gain, why should one social group of men get the privilege and another be denied? Why should there be any limitation at all in respect to club licenses? If it be said that they are not bona fide organizations or are one-man clubs, and then only in name, or that they do not obey the law, the answer is, why not establish that as a fact and then take the appropriate measures to weed out the unworthy and the disobedient? That's something quite different from refusing to give to a worthy group of men who have clubbed together for benevolent, fraternal, social or recreational purposes, any chance at all to dispense liquor in their own club house except they pay the full fee as if they were conducting the enterprise for private gain or commercial exploitation."

A municipality has the power to limit the number of club licenses but the burden of proof to justify such a numerical limitation should be placed upon the municipality. Societa Operaia v. Trenton, Bulletin 41, Item 5; Irish American v. Kearny, *supra*; John Adams Post v. Wildwood, Bulletin 456, Item 9; Washington Lodge v. Washington, Bulletin 484, Item 7. On the evidence presented herein, no reason appears why the club licenses should be limited to one or why applicant is not entitled to a club license.

Accordingly, I shall issue the license.

ALFRED E. DRISCOLL,
Commissioner.

Dated: July 29, 1942.

6. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENTS IN LICENSE APPLICATION - FAILURE TO DISCLOSE MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - SITUATION CORRECTED - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

ARILDA SULLIVAN,)
145 - 35th St.,)
Union City, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-191, issued by the Board of Commissioners of the City of Union City (Hudson County) for the fiscal year 1941-42 and C-191 for the fiscal year 1942-43, and transferred during the pendency of these proceedings to John Orlando, for the same premises.)
- - - - -)

Cyril J. McCauley, Esq., Attorney for Defendant-Licensee.
G. George Addonizio, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant, holder of a plenary retail consumption license in Union City, pleads not guilty to the charges that:

- (1) She falsely stated in her license application that she resided at 148 - 35th Street, Union City, when in fact her residence was 7409 First Avenue, North Bergen; and, further, falsely denied therein that anyone other than herself had any interest in the license being applied for, such falsifications being in violation of R. S. 33:1-25.
- (2) That she knowingly aided and abetted John Orlando, a non-licensee, to exercise the rights and privileges of her license contrary to R. S. 33:1-26, in violation of R. S. 33:1-52.

The facts are that John Orlando, father of the licensee, originally held the license. Lacking the funds with which to pay bills and the fee for the license renewal, Orlando borrowed \$885.00 from the licensee for the purpose of meeting these obligations. It was agreed that the license was to be placed in the name of Arilda Sullivan in order to secure the repayment of the loan. It was further agreed that upon the repayment of the loan the license was to be transferred back to Orlando. Most of the loan has been repaid.

Although the defendant entered a plea of not guilty, she frankly admitted all the facts. She stated that she never actually owned the business and considered it to be her father's and that all profits from the business went to her father.

Testifying as to her false statement in her application concerning her residence, the licensee stated that she had lived with her father at the address given in the application but upon her marriage had moved to her own home in the vicinity of her old address.

She stated that the lease for the residence occupied by her father was in her name and that she paid the rent for the living quarters. She further stated that she was confused in the question and since the licensed premises and the living quarters where she used to reside with her father was in the same building as the licensed premises she thought it necessary to give that address.

While it was improper and unlawful to transfer the license to secure the loan, I am convinced it was done through ignorance and an attempt on the part of the licensee to protect her money. It appears from the record that there was no other reason other than that testified to by the licensee and her father. However, ignorance of the law is no excuse and whether or not the intention was good on the part of the licensee the law was nevertheless violated.

I conclude that the licensee was guilty of being a "front" for her father, John Orlando, and knowingly aided and abetted the said John Orlando, a non-licensee, to exercise the rights and privileges of her license. I therefore find the licensee guilty, as charged.

As to the charge of licensee falsely stating her address in her application, I find her guilty as charged. However, I feel that the circumstances surrounding this violation should be given consideration. The fact that licensee, until recently, lived at the address given in the application and subsequently moved, after her marriage, to her own home, will be taken into consideration.

John Orlando was at all times eligible to hold a license. The license has been transferred back to him and the unlawful situation has been corrected. In view of the frank admission of all the facts by the licensee, the correction of the "front" and the fact that neither she nor Orlando has any previous record, I will confine the suspension of the license to a period of ten days.

Accordingly, it is, on this 29th day of July, 1942,

ORDERED, that Plenary Retail Consumption License C-191, heretofore issued by the Board of Commissioners of the City of Union City to Arilda Sullivan for premises 148 - 35th Street, Union City, and transferred during the pendency of these proceedings to John Orlando for the same premises, be and the same is hereby suspended for a period of ten (10) days, commencing Monday, August 3, 1942, at 3:00 A. M. and concluding Wednesday, August 13, 1942, at 3:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

7. APPELLATE DECISIONS - NAPPA v. BELLEVILLE.

SANTA NAPPA,)

Appellant,)

-vs-)

ON APPEAL
CONCLUSIONS AND ORDER

BOARD OF COMMISSIONERS OF THE)

TOWN OF BELLEVILLE,)

Respondent)

-----)

Martin Simon, Esq., Attorney for Appellant.

Lawrence E. Keenan, Esq., Attorney for Respondent.

F. D. Masucci, Esq., Attorney for the Executors of the Estate of Florence Core.

BY THE COMMISSIONER:

Respondent denied appellant's application for transfer of a plenary retail consumption license held by Enrico Core and James Mango, Executors of the Estate of Florence Core, for premises 14 Belmont Avenue, Belleville, N. J., for the last fiscal year, and also denied appellant's application for renewal of that license for the current period. This appeal is from the denials of both those applications.

The major reason for the denials is, as stated in respondent's answer, that "no person by the name of Santa Nappa resides at 52 Belmont Avenue, Belleville, N. J., as stated in applications made by the appellant in the within matter." Respondent produced no witnesses nor any other proof on this issue.

From appellant's testimony, which stands uncontradicted, it appears that, although christened "Santa", she has always been known as "Sadie." Since her marriage about five years ago she has been referred to as Sadie Nappa and ever since then has resided with her husband at 52 Belmont Ave., Belleville, N. J. She and her husband are the only persons in that neighborhood having the name "Nappa." Before filing her applications with respondent, she consulted an attorney, who advised her to use her real name, Santa Nappa, instead of the name by which she was commonly known, Sadie Nappa.

I am satisfied from the evidence that appellant does now reside, and for at least five years last past has resided, at the address given by her in the applications filed with respondent, and that she did not deceive, nor intend to deceive, respondent as to her correct identity or address.

On cross-examination of appellant, respondent's attorney attempted to show that appellant was a "front" for her husband. The proofs, however, fall far short of showing that anyone other than appellant is interested in the license applied for.

Respondent also sets forth in its answer that the applications were denied because "the policy of the Board of Commissioners of the Town of Belleville is to diminish the number of plenary retail consumption licenses." While this is a wholly salutary objective, I have already held that transfer of a license, whether

from person to person or from place to place, cannot be denied on the sole ground that the issuing authority is desirous of reducing the number of licenses outstanding in its community. Costa v. Verona, Bulletin 501, Item 2. In that case I cited the following language of the late Commissioner Burnett in the case of Kirschhoff v. Millville et al., Bulletin 254, Item 8:

"Indubitably, reduction of the number of licenses in a municipality, when too many are deemed to be outstanding therein, is a praiseworthy end. But this objective may not be achieved in complete disregard of individual interests. Conway v. Haddon, Bulletin 251, Item 3. Licensees invest time, effort and money in their licensed businesses. The statute provides for a method whereby, through transfer of license within the sound discretion of the issuing authority, they may sell their businesses and may remove them to new sites. In fairness, they should not be denied this privilege and be forced to the alternative of remaining in their liquor business willy-nilly and at the same location or else surrendering their investment, merely because the municipal authorities erred in previously granting too many licenses and now wish to correct that mistake by destroying transferability.....

"Respondent Board asks the question: 'If existing licenses may be freely sold and transferred, how will the number ever be reduced?'

"Here is one answer which I have repeatedly urged upon municipalities, viz.: Reduction of outstanding licenses may be effected with fairness by eliminating, through revocation or through refusal to renew, those whose owners have misconducted themselves. Re Renton, Bulletin 115, Item 8; Re Juska, Bulletin 116, Item 7; Re Haney, Bulletin 119, Item 9; Re Hinchcliffe, Bulletin 171, Item 7; Re Bailey, Bulletin 172, Item 10. Case after case has been decided where renewals have been denied and upheld on appeal because of previous misconduct of the licensee. White v. Bordentown, Bulletin 130, Item 4; Wellens v. Passaic, Bulletin 134, Item 4; Schelf v. Weehawken, Bulletin 138, Item 10; Girard v. Trenton, Bulletin 140, Item 2; Greenberg v. Caldwell, Bulletin 141, Item 7; Brown v. Newark, Bulletin 146, Item 9; Hagenbucher v. Somers Point, Bulletin 192, Item 6; Repici v. Hamilton, Bulletin 201, Item 8; Hagerty v. Cranbury, Bulletin 202, Item 2; Klotz v. Trenton, Bulletin 202, Item 7; Callahan v. Keansburg, Bulletin 204, Item 6. Cf. Zicherman v. Newark, Bulletin 227, Item 7.

"Or, if public interest demands such drastic and difficult action, municipalities may adopt a numerical quota which will require, at renewal time, the selection of only the most desirable of renewal applicants. See Re Hinchcliffe, supra.

"These suggested methods reduce the quantity of licenses on a basis of quality. Reasonable and fair discrimination is substituted for the arbitrary and unfair method of denying all licensees, whether their conduct has been good or bad, the privilege to transfer their licenses and thus ultimately starve, exhaust or otherwise

compel some of them to surrender or be unable to renew their licenses.

* * * * *

"The Board argues that the authority to grant a person-to-person transfer of an outstanding municipal license is a matter confided to the discretion of the issuing authority. It is. R. S. 33:1-26 (Control Act, Sec. 23). But it is also true that this discretion may not be exercised arbitrarily. A transfer, whether from person to person or from place to place, may be denied if there are valid and reasonable grounds to justify such refusal. See Blumenthal v. Wall, Bulletin 169, Item 6; Parker v. Belleville, Bulletin 179, Item 13; also see Craig v. Orange, *supra*. No such ground here appears."

Respondent's action in denying appellant's application for transfer of the license as applied for, and also denying the subsequent application for renewal of that license is hereby reversed. Although the license for which application for transfer was made by appellant expired on June 30, 1942, appellant has preserved her rights therein by filing a timely application for renewal of that license on the theory that the application for transfer should have been granted by respondent. Since I have determined that the transfer was wrongly refused by respondent, I shall direct that respondent issue the license as applied for by appellant in her renewal application.

Accordingly, it is, on this 5th day of August, 1942,

ORDERED, that respondent's action in denying appellant's application for a transfer of the plenary retail consumption license held by Enrico Core and James Mango, Executors of the Estate of Florence Core, for premises 14 Belmont Avenue, Belleville, N. J., for the fiscal year 1941-42, and also in denying appellant's application for renewal of that license for the current fiscal year, be and the same is hereby reversed; and it is further

ORDERED, that respondent issue forthwith to appellant a plenary retail consumption license for premises 14 Belmont Ave., Belleville, N. J.

ALFRED E. DRISCOLL,
Commissioner.

8. DISCIPLINARY PROCEEDINGS - FRONT - REAL OWNER DISQUALIFIED BECAUSE NOT A RESIDENT OF THE STATE FOR FIVE YEARS - ABUSE OF CORPORATE FICTION - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - SITUATION CORRECTED - LICENSE SUSPENDED FOR 10 DAYS - DISQUALIFIED PERSON BARRED FROM EMPLOYMENT BY LICENSEE.

DISCIPLINARY PROCEEDINGS - FAILURE TO DISCLOSE INTEREST IN LICENSE APPLICATION FOR EMPLOYMENT PERMIT, IN VIOLATION OF R. S. 33:1-25 - EXERCISING THE RIGHTS AND PRIVILEGES OF THE LICENSE - EMPLOYMENT PERMIT SUSPENDED FOR 20 DAYS - PERMITTEE BARRED FROM EMPLOYMENT ON PREMISES OF THE ABOVE LICENSEE.

In the Matter of Disciplinary Proceedings against

H. D. Z. TAVERN, INC.,
Hopper's Corner,
P. O. Oak Ridge,
Jefferson Township, N. J.,

Holder of Plenary Retail Consumption License C-18 for the fiscal year 1941-42, and now holder of Plenary Retail Consumption License C-29 for the current (1942-43) year, issued by the Township Committee of Jefferson Township.

CONCLUSIONS AND ORDER

In the Matter of Disciplinary Proceedings against

FRANK DISTASI,
Milton Road,
Jefferson Township,
Oak Ridge, N. J.,

Holder of Employment Permit No. 9531 for the fiscal year 1941-42, issued by the State Commissioner of Alcoholic Beverage Control.

Aaron Van Poznak, Esq., Attorney for Defendant-Licensee and Defendant-Permittee.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee, H. D. Z. Tavern, Inc., pleads guilty to charges alleging, in substance, that (1) it falsified its application for license for the fiscal year 1941-42 by failing to disclose therein that Frank Distasi was the real and beneficial owner of the license, in violation of R. S. 33:1-25; and (2) it permitted said Frank Distasi to exercise the privileges of its license contrary to R. S. 33:1-26, in violation of R. S. 33:1-52.

Defendant, Frank Distasi, holder of an employment permit for the fiscal year 1941-42, pleads guilty to charges alleging, in substance, that (1) in his application for said employment permit he

falsely stated, in violation of R. S. 33:1-25, that he held, directly or indirectly, only a 2% interest in H. D. Z. Tavern, Inc., whereas he held, directly or indirectly, all the stock of said corporation, and (2) he exercised the rights and privileges of the license issued to H. D. Z. Tavern, Inc., in violation of R. S. 33:1-26.

Prior to August 1941, Frank Distasi was a resident of New York City. Because of poor health, and on specific advice from his doctor, he came to New Jersey. Distasi had been a tavern owner and operator for nine years in New York City, and was desirous of opening a tavern in this State. Distasi was cognizant of the fact that he would fail to qualify as an individual applicant solely by reason of lack of five years' residence in New Jersey immediately preceding the application for license. He sought the advice of an attorney, who advised him to form a corporation, and represented to him that if this were done he could properly obtain a license through the corporation. This the defendant did, and a license was obtained by Cozy Lake Tavern Inc. (name subsequently changed to H.D.Z. Tavern, Inc.), the defendant corporation. Distasi then obtained an employment permit from this Department and actually ran the licensed premises. Distasi frankly admitted the truth of all the charges. He testified that he owned all the stock in the H. D. Z. Tavern, Inc. and that he suppressed material facts concerning his interest in the tavern when he applied for his employment permit.

At the present time the situation has been corrected. All the corporate stock has been sold and Distasi has no interest whatsoever in the defendant corporation.

Distasi's contention that he acted on the advice of an attorney is not a sufficient excuse. Erroneous legal advice is not an insulator from legal responsibility." Re Carabelli, Bulletin 174, Item 15. It is apparent that Distasi at least had a general knowledge of what was being done, despite his representation of ignorance and complete innocence of any intention to violate the law.

It should be noted that this case concerns false statements in applications for a license and a permit for the fiscal year 1941-42. Hence it does not come within the ruling as to increased penalties to be imposed where a "front" is created or continued after July 1, 1942. See Bulletin 512, Item 9.

As to penalty against H. D. Z. Tavern, Inc.: I will suspend this corporation's license for a period of ten days, on condition, however, that Frank Distasi shall not work on the licensed premises. Cf. Re Cliffside Park Town Tavern, Bulletin 492, Item 4.

Although this proceeding was instituted during the last licensing year, which expired June 30, 1942, it does not abate but remains fully effective against the defendant's renewal license for the current (1942-43) year. State Regulations No. 15.

As to penalty against Frank Distasi: I note that Distasi has applied for an employment permit for the fiscal year 1942-43, which has not as yet been granted. Although I do not desire to preclude anyone from making a livelihood, and I am cognizant of the fact that the defendant has a family to support, I cannot allow his violations to go unpunished. I therefore will withhold issuance of his employment permit for a period of twenty days from the date of this order. Further, such permit, when issued, will be on the express condition that Distasi may not use the employment permit on the premises of the H. D. Z. Tavern, Inc.

Employment of Distasi on these premises in violation of the aforesaid condition will be cause for revocation of both the license and permit.

Affiliate proceedings were brought in this case to cancel the license outright because of the corporation's illegal set-up. However, in view of the above disposition, these proceedings for cancellation are dismissed. Re The A. M. Home Stores, Inc., Bulletin 512, Item 6.

Accordingly, it is, on this 5th day of August, 1942,

ORDERED, that Plenary Retail Consumption License C-29, heretofore issued to H. D. Z. Tavern, Inc. by the Township Committee of Jefferson Township for the current fiscal year, for premises at Hopper's Corner, P. O. Oak Ridge, Jefferson Township, New Jersey, be and the same is hereby suspended for a period of ten (10) days, effective August 10, 1942, at 3:00 A.M. and concluding August 20, 1942, at 3:00 A.M.; and it is further

ORDERED, that no employment permit shall be issued to Frank Distasi by this Department for a period of twenty (20) days from the date hereof, and that said employment permit, when issued, shall be upon the condition that Frank Distasi may not use said permit for employment on the premises of the H. D. Z. Tavern, Inc., Hopper's Corner, P. O. Oak Ridge, Jefferson Township, N. J.

Alfred E. Grisoll
Commissioner.

CHECKED BY No. 2