

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

BULLETIN 658

MARCH 22, 1945.

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS,
IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS
NO. 20 - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against)

EDWARD DUFFY and JOHN McDONALD)
18 Hamilton Street)
Paterson 1, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-315 issued for the 1943-44 fiscal year, and renewed for the current (1944-45) fiscal year, by the Board of Alcoholic Beverage Control of the City of Paterson.)
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Charles S. Silberman, Esq., Attorney for Defendant-licensees.
Milton H. Cooper, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensees have entered a plea of not guilty to the following charges:

"1. During the months of August and September, 1943, you sold alcoholic beverages to Alberta --- and Adelaide ---, minors, in violation of R. S. 33:1-77.

"2. During the times aforesaid, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to Alberta --- and Adelaide ----, persons under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon your licensed premises, in violation of Rule 1 of State Regulations No. 20.

"3. During the times aforesaid, you allowed, permitted and suffered Eleanor ----, a person under the age of twenty-one (21) years, to consume alcoholic beverages upon your licensed premises, in violation of Rule 1 of State Regulations No. 20.

"4. During the month of August, 1943, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to Shirley ----, a person actually or apparently intoxicated, and allowed, permitted and suffered the consumption of alcoholic beverages by such person on the licensed premises, in violation of Rule 1 of State Regulations No. 20."

After reviewing the testimony, I have decided to dismiss charges (3) and (4) for the following reasons: Eleanor, age sixteen, was on defendants' premises with other young girls in August 1943, but there is no evidence that alcoholic beverages were sold, served or delivered to her. Eleanor testified that, while seated in a booth, she "took some of Adelaide's drink" but this seems to have been an

isolated incident and to have occurred without the knowledge of defendants or any of their agents. On the same occasion Shirley became intoxicated on the licensed premises, but there is no evidence that she was served with or consumed any alcoholic beverages while she was intoxicated. Defendant-licensees must learn to exercise greater care in the conduct of their licensed business. However, upon the evidence presented, I am reluctantly forced to conclude that the Department has failed to establish the guilt of defendants as to charges (3) and (4).

As to charges (1) and (2): Alberta, age sixteen years, testified that, on three of the four occasions she visited defendants' licensed premises in August 1943, she was served Carstairs whiskey and lemon soda or beer. She states that she was served by a waitress and by John McDonald, one of the licensees. She also says that no one inquired as to her age or requested her to make any written statement as to her age. Her testimony is clear-cut and convincing and was not shaken on cross-examination.

Adelaide, age eighteen years, testified under oath, at the first hearing, that, when she first went to defendants' premises about August 1943, she was accompanied by several other girls and that she was served Carstairs whiskey and lemon soda, and that on later visits she was served beer. She identified the licensed premises and stated that, on one occasion, John McDonald served the drinks to her. At a subsequent hearing Adelaide retracted her previous testimony and then denied that she had ever consumed alcoholic beverages on the licensed premises. While this retraction weakens her testimony, it does not completely destroy the Department's case so far as she is concerned. Another witness, Eleanor, testified that, at least on one occasion, she took "sips" out of a glass of beer which was in front of Adelaide. Considering all the testimony, I conclude that Adelaide told the truth at the first hearing.

John McDonald, one of the licensees, testified that the girls came to his place on several occasions; that he personally served them and that on each occasion they ordered "birch, coke and lemon soda"; that he never served them alcoholic beverages and that, after they had made several visits, he told them "they had better stay out." His partner, Edward Duffy, who is in the military service, testified that he came home on various occasions and that he never saw the girls in the licensed premises.

After reviewing all the testimony, I find defendant-licensees guilty as to charges (1) and (2).

Licensees have no prior adjudicated record. However, the fact that one of the minors was sixteen years of age makes the offense an aggravated one and, hence, I shall suspend the license for a period of fifteen days.

Accordingly, it is, on this 13th day of March, 1945,

ORDERED, that Plenary Retail Consumption License C-315, issued for the current fiscal year by the Board of Alcoholic Beverage Control of the City of Paterson to Edward Duffy and John McDonald, for premises 18 Hamilton Street, Paterson, be and the same is hereby suspended for fifteen (15) days, commencing at 12:01 a.m. March 20, 1945, and terminating at 12:01 a.m. April 4, 1945.

ALFRED E. DRISCOLL
Commissioner.

2. DISCIPLINARY PROCEEDINGS -- SALE OF ALCOHOLIC BEVERAGES BY CLUB LICENSEE, IN VIOLATION OF R. S. 33:1-2 AND RULE 5 OF STATE REGULATIONS NO. 7 - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against 2ND WARD COLORED CITIZENS CLUB 267 No. 11th Street Camden, N. J., Holder of Club License CB-13, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

CONCLUSIONS AND ORDER

2nd Ward Colored Citizens Club, Defendant-licensee, by Ira A. Hall, Secretary. Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads guilty to charge alleging that it sold alcoholic beverages to persons other than bona fide members and their bona fide guests, in violation of R. S. 33:1-2 and rule 5 of State Regulations No. 7.

The file in this case discloses that on February 16, 1945 an investigator of the Department of Alcoholic Beverage Control entered the licensed premises and that alcoholic beverages were sold and served to him by a trustee of the club. The investigator was not a member or guest of any member of the association and the trustee did not question him to ascertain if he was. I have repeatedly stated that club licensees must scrupulously obey the law respecting sales to non-members. Failure to do so warrants the imposition of severe penalties for violations of this character.

The defendant has no prior adjudicated record. I shall, therefore, suspend the license for a period of fifteen days, with remission of five days for the guilty plea, or a net suspension of ten days. Re Meadowbrook Social Club, Bulletin 549, Item 4.

Accordingly, it is, on this 14th day of March, 1945,

ORDERED, that Club License CB-13, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to 2nd Ward Colored Citizens Club for premises 267 No. 11th Street, Camden, be and the same is hereby suspended for a period of ten (10) days, commencing at 12:01 a.m. March 19, 1945, and terminating at 12:01 a.m. March 29, 1945.

ALFRED E. DRISCOLL Commissioner.

3. DISCIPLINARY PROCEEDINGS - ORDER MODIFYING PREVIOUS REVOCATION ORDER TO SUSPENSION FOR BALANCE OF TERM.

In the Matter of Disciplinary Proceedings against)
 ANNA ZUCK)
 T/a ANNA'S TAVERN)
 312 Lexington Avenue)
 Clifton, N. J.,)
 Holder of Plenary Retail Consumption License C-127, issued by the Municipal Council of the City of Clifton.)
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ORDER

BY THE COMMISSIONER:

This matter comes before me on the application of the licensee for reconsideration of my Order of June 28, 1944, revoking Plenary Retail Consumption License C-127, issued by the Municipal Council of the City of Clifton to Anna Zuck, t/a Anna's Tavern, for premises 312 Lexington Avenue, Clifton.

Some time ago the Commissioner received a letter from a son of the licensee who is presently serving his country overseas as a member of the armed forces. This letter reads, in part, as follows:

"You see, Mom and I have been very close and I've been aiding her until she was forced to do without me when I was called. However when I left, I felt everything would be all right. Although Mom might have not had the best of educations I do know that she the best mother anyone could have wanted. Yes, I grant you I may be biased but I think she did an excellent job as an mother and member of the community. I guess you can see now why I just can't seem to realize that Mom could have done anything so seriously wrong as to have an revokation of her license. It was and is her only means of livihood. And somehow or another, I just can't seem to realize but there has been some details overlooked. I shan't take much more of your time, knowing how busy you are as we all are trying to do our jobs, but I shall leave it to your sense of fair play. Please, please give Mom every break possible. She trys so hard to be right and fair that it sometimes gets her into trouble."

I know of no higher compliment that could be given to a mother than the one contained in the young soldier's letter. It has a genuine ring.

Accordingly, I have fully reviewed the entire record against the licensee. The Order of Revocation followed a plea of non vult to six charges with the exception of a portion of one charge, to which a plea of not guilty was entered.

The Order admittedly is severe and its purpose was obvious. On the other hand, after having considered the mitigating circumstances presented on this application and following a review of the proceedings, I reach a conclusion that justice will be well served by a modification of the Order from one of revocation to suspension for the balance of the term.

This action on my part should not be taken as a precedent for future cases. I will continue to reject spurious letters and specious imitations of the soldier's letter designed solely for the purpose of appealing to my sympathies.

Anna Zuck is not an educated person. Her difficulties appear to have been largely the product of her own ignorance, the absence of her family and the vicious practice of third parties who took advantage of her. I believe, however, that she has learned her lesson and her premises have been closed since June 28, 1944.

The municipal issuing authority appears to be confident that the licensee is capable of conducting her premises in a proper manner. Immediately prior to the revocation it had issued a license to her for the current year.

Accordingly, on this 7th day of February, 1945, the Order heretofore entered on June 28, 1944, revoking Plenary Retail Consumption License C-127, issued by the Municipal Council of the City of Clifton to Anna Zuck, t/a Anna's Tavern, for premises 312 Lexington Avenue, Clifton, be and the same is hereby ORDERED modified to a suspension for the balance of the term of said license.

ALFRED E. DRISCOLL
Commissioner.

4. APPELLATE DECISIONS - MULCAHY, SWEET AND BORMAN v. MAPLEWOOD TOWNSHIP AND TOPF.

ROBERT E. MULCAHY, BENJAMIN)
SWEET and JOHN BORMAN,)
Appellants,)
-vs-)
TOWNSHIP COMMITTEE OF THE TOWNSHIP)
OF MAPLEWOOD and ERNEST TOPF,)
t/a TOPF'S MAPLEWOOD PHARMACY,)
Respondents.)

ON APPEAL
CONCLUSIONS AND ORDER

Parsonnet, Weitzman & Oransky, Esqs., by Samuel Weitzman, Esq.,
Attorneys for Appellant.
Osborne, Cornish & Scheck, Esqs., by A. H. Cornish, Esq.,
Attorneys for Respondent Township Committee.
Sidney Simandl, Esq., Attorney for Respondent-licensee.
BY THE COMMISSIONER:

This is an appeal from the issuance by the respondent Township Committee of a plenary retail distribution license to respondent, Ernest Topf, for premises 1385 Springfield Avenue, Maplewood, New Jersey.

The appellants present two grounds of appeal urging that (1) there is no necessity for an additional license in the vicinity in question; and (2) the advertisement containing respondent's notice of intention is defective.

Topf's advertisement was in fact defective. The notice of application as advertised in the local newspaper contained an obvious error. The first line of the notice was apparently lifted bodily from the advertisement of another liquor licensee in the municipality and contains the name of the latter instead of the respondent licensee.

The Alcoholic Beverage Law (R. S. 33:1-25) provides that an applicant for a license shall cause a notice of application to be published in a form prescribed by the rules and regulations. Pursuant thereto, State Regulations No. 2 were promulgated. Rule 2 of the foregoing regulations prescribes the form of the notice of application and requires, inter alia, that the name of the applicant appear in the notice.

The obvious purpose of this requirement is to identify the applicant to the public and to afford interested citizens an opportunity to protest the granting of the application if they desire so to do.

The failure of the notice to disclose the identity of the applicant, even though inadvertent, renders the notice fatally defective and voids the application. Cf. Parker v. Newark, Bulletin 425, Item 12, and the cases therein cited.

The action of the respondent municipality granting the application must be reversed and the license cancelled.

The foregoing conclusion renders unnecessary any discussion of the first ground urged for reversal. I have, nevertheless, considered the entire record.

Within the immediate neighborhood of the respondent Topf's premises there are two stores for which plenary retail distribution licenses were previously issued. One of these stores shares a portion of the building in which Topf's premises are located. The other store is immediately adjacent thereto. That there is a reasonable difference of opinion as to the desirability of placing a third "package goods" establishment in such close proximity to the two established licensed premises is apparent from the contradictory testimony given herein. There is little, if any, evidence in the case that an additional license was required to meet the public convenience and necessity. There is nothing in the testimony to indicate that the previously established licensees are unable to adequately take care of the demands of the locality.

Admittedly, it is difficult to determine the burden of proof requisite to demonstrate that the community needs or will be more properly or conveniently serviced by another liquor store. The ultimate test, however, should be "public convenience and necessity." Colonna v. Montclair, Bulletin 39, Item 8.

My function on appeals of this type, however, is not to substitute my personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion, and if so to affirm irrespective of my personal view on the subject. Rafalowski v. Trenton, Bulletin 155, Item 8; North End Tavern, Inc. v. Northvale, Bulletin 493, Item 5; Petti v. Bayonne, Bulletin 564, Item 7.

On the record presented here, there is a serious question in my mind as to whether good cause exists for the issuance of an additional plenary retail distribution license in the area in question. That point, however, need not be decided at this time. If the respondent Topf applies for a new license, the issuing authority should squarely determine the basic issue of "public necessity."

Accordingly, it is, on this 14th day of March, 1945,

ORDERED, that the action of respondent Township Committee of the Township of Maplewood, in issuing a plenary retail distribution license to Ernest Topf, t/a Topf's Maplewood Pharmacy, for premises 1885 Springfield Avenue, Maplewood, be and the same is hereby reversed and said license is hereby cancelled and declared null and void and all operation thereunder shall cease immediately.

ALFRED E. DRISCOLL,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BY RETAILER CONTRARY TO TERMS OF ITS LICENSE - LICENSE SUSPENDED FOR A PERIOD OF 40 DAYS.

In the Matter of Disciplinary Proceedings against

ABE GOLUB, INC.
367-369 Springfield Ave.
Newark 3, N. J.,

Holder of Plenary Retail Distribution License D-130 for the fiscal years 1943-44 and 1944-45, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark, and transferred during the pendency of these proceedings to

FAY'S WINE & LIQUOR CO., INC.

for the same premises.

CONCLUSIONS
AND ORDER

George R. Sommer, Esq., Attorney for Defendant-licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee, the holder of a plenary retail distribution license issued by the City of Newark, was served with a charge alleging that, on or about November 19, 1943, it sold alcoholic beverages contrary to the terms of its license as defined by R. S. 33:1-12(3)a. Subsequently, defendant was served with a supplemental charge alleging that, on or about October 13, 1943, it sold alcoholic beverages contrary to the terms of its license as aforesaid. The defendant pleaded not guilty to both charges.

At the hearing on the first charge it was developed by the testimony that one Jake R. Smith approached Abe Golub, president and manager of the defendant corporation, and asked if Mr. Golub could sell him a large quantity (100 cases seems to have been the amount first specified) of standard brand whiskeys. Golub stated that he did not have any standard brands in the quantity required but was expecting a shipment of special brands. Later, on the same day, Smith returned and was offered "Baltimore Club Brand Blended Whiskey, Private Vat." The defendant had received a shipment of 204 cases in pints and 132 cases in fifths of this whiskey an hour or so before.

The testimony discloses that Smith claimed that he wanted the whiskey for his own use, for the use of his friends and to distribute as Christmas presents. Golub claims that he was under the impression that Smith was engaged in the wholesale or manufacturing business (non-beverage) in Newark, New Jersey.

Smith paid Golub approximately \$11,000.00 in cash for the whiskey, the payment being made in comparatively small bills wrapped in a paper package. Smith thereupon left the licensed premises to make the necessary arrangements for transporting the whiskey. At the hearing Smith insisted that he didn't know anything about the whiskey in question, was not familiar with the brand, and made no effort to taste or otherwise sample the same prior to his purchase.

Early in the evening Smith returned with a truck bearing the name of a North Carolina trucking company and carrying license plates issued by that State. During the entire period that the truck was being loaded, it was under observation of investigators of the Department of Alcoholic Beverage Control of the State of New Jersey. These investigators followed the truck and had it continually under their observation from the time it left the licensed premises at about 7:30 p.m. until they seized the truck and the contents thereof on State Highway No. 25. It was thereupon discovered that the serial numbers on all but two of the cases had been obliterated. From the testimony of the ABC agents it is apparent that destruction of the serial numbers occurred prior to the time the whiskey was loaded on the truck. There is testimony that the serial numbers were on the cases when the whiskey was delivered to the defendant's premises.

In an affiliate seizure case the whiskey was ordered forfeited by the Commissioner of Alcoholic Beverage Control. Seizure Case No. 6544, Bulletin 657, Item 6.

The defendant stresses, both in its testimony and in its brief, that its president had no way of knowing that the whiskey was being purchased by Smith for anything other than his own personal consumption and distribution as gifts.

It developed at the hearing that Smith has a criminal record in North Carolina. He has been convicted of violating North Carolina liquor laws on a number of occasions, the most recent conviction being in February 1943. While he held a Federal Special Retail Liquor Dealer Stamp and at one time held a retail beer and wine license in North Carolina, he was not licensed to engage in the sale of whiskey in that State.

At the time of the sale, the defendant did not hold a Federal Wholesale Liquor Dealer Special Tax Stamp, as required by Federal law, and hence the sale of the amount of whiskey in question was contrary to Federal law.

While the quantity herein involved is not, in itself, proof that the whiskey was intended for resale, nevertheless the sale of 6432 bottles of whiskey for a total price of over \$11,000.00 in cash, to one person, at one time, in my opinion should have put the retail licensee on notice that he was dealing with someone other than an ordinary consumer. Retail licensees, by the terms of their licenses, may only sell to consumers. R. S. 33:1-12(3)a; R. S. 33:1-1(u). See also R. S. 33:1-2.

Golub admits that he was not without doubt as to the bona fides of the transaction. He testified, "After he (Smith) paid me, the thought came to my mind maybe there is something wrong, I sold him so much liquor. I figured that if there is anything wrong, I shall have time to change my mind and give him his money - but I didn't think it was anything out of the ordinary." In a similar vein Golub testified, "If a man (referring to Smith) has that much money to buy liquor -- when he paid me the thought went through my

mind he may be buying it for sale but if he is not taking the liquor immediately and if anything should come up, I could change my mind." Golub publicly attempts to resolve all doubts prior to the sale by conceding, "he was anxious to make the sale, thinking he was putting something over on him" (Smith) -- this, despite "the thought" that Smith might be "buying it for resale."

I do not believe that either Smith or Golub told the whole story. The peculiar and telltale characteristics of the transaction, including the form and manner of payment, the obliteration of the identifying serial numbers, the miraculous delivery of this quantity of whiskey at the defendant's premises a few hours before the sale, and the equally miraculous appearance of the truck and trailer, all lead me to the conclusion that Golub, the president of the defendant, knew that the transaction was not a bona fide one and that the whiskey was intended for commercial use.

The defendant was put on notice that, if it desired to observe the law and to trade within the limits of its license, it should make reasonable inquiry with respect to the intended use of the whiskey. Whether the defendant knew that the whiskey was, in the first instance, intended for someone other than a consumer raises a question of fact and "like any other fact it (knowledge) may be established by any relevant evidence, direct or circumstantial or by inferences reasonably drawn from other competent facts established" by the testimony. State v. Boucher, 119 Conn. 436, 439; 177 A. 383. Licensees may not close their eyes to suspicious circumstances. Cf. Re Kolaska v. Newark, Bulletin 582, Item 13.

I find the defendant guilty as to the first charge.

With respect to the second or supplemental charge, it is to be noted that this sale took place some time before the Smith transaction, although the Department's investigation was not concluded until after the first charge was served upon defendant.

The transaction in question revolves around the sale of 35 cases of whiskey to a liquor salesman holding a solicitor's permit and employed by a New Jersey wholesale licensee. This liquor salesman was introduced to Golub by another liquor salesman, who apparently warned Golub to be careful and advised the president of the defendant that the man was a liquor salesman.

At the time of the latter transaction, whiskey was very scarce. It was not the order of the day to sell 35 cases to one person. Golub was aware of the fact that the whiskey was to be transported in a car bearing a transportation insignia issued by the Department of Alcoholic Beverage Control. He should have known that this insignia permitted the transportation of liquor belonging to the salesman's employer exclusively. See State Regulations No. 10, Rule 5.

After having carefully reviewed the entire record, I am satisfied that Golub knew that this whiskey was intended for resale and, hence, I must find the defendant guilty of the supplemental charge.

The defendant's serious violations contributed to the disgraceful black market activities which, if permitted to go unchecked, would have placed in jeopardy the entire license system.

Abe Golub was the sole owner of the defendant corporation. During a prior period when Abe Golub personally held a license, he was found guilty of a fair trade violation and his license was suspended for a period of five days.

Since these proceedings were commenced, the license has been transferred to Fay's Wine & Liquor Co., Inc., which appears to be fully qualified to hold the same, subject, of course, to the outcome of these proceedings and any suspension that may be imposed by reason thereof. State Regulations No. 15. Under all the circumstances herein, and after taking into consideration the transfer, I shall suspend the license now held by Fay's Wine & Liquor Co., Inc. for a period of forty days.

Although these proceedings were instituted during the last licensing term, they do not in any wise abate but remain fully effective against the current renewal license for the 1944-45 term. State Regulations No. 15.

Accordingly, it is, on this 14th day of March, 1945,

ORDERED, that Plenary Retail Distribution License D-130, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Abe Golub, Inc., for premises 367-369 Springfield Avenue, Newark, N. J., and transferred during the pendency of these proceedings to Fay's Wine & Liquor Co., Inc., for the same premises, be and the same is hereby suspended for a period of forty (40) days, commencing at 12:01 a.m. March 19, 1945, and terminating at 12:01 a.m. April 28, 1945.

ALFRED E. DRISCOLL
Commissioner.

6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 40 - PERMITTING LICENSED PREMISES TO REMAIN OPEN, IN VIOLATION OF RULE 2 OF STATE REGULATIONS NO. 40 - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
GEORGE R. WERKHEISER)
T/a LOG CABIN INN)
Route 8, Knowlton Township)
P. O. Columbia, N. J.,)
Holder of Plenary Retail Consumption License C-7 issued by the)
Township Committee of the Township)
of Knowlton.)
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CONCLUSIONS
AND ORDER

Peter Friedman, Esq., Attorney for Defendant-licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleaded non vult to charges alleging that he permitted the sale, service, delivery and consumption of alcoholic beverages on his licensed premises between midnight and 7:00 a.m. on Sunday, March 4, 1945, in violation of Rule 1 of State Regulations No. 40; and that at the same time he failed to have his entire premises closed, in violation of Rule 2 of State Regulations No. 40.

ABC agents report that they entered defendant's premises at about 12:20 a.m. on March 4, 1945, and observed about twenty patrons in the barroom and a male bartender, wearing a white apron, behind the bar. They also observed four glasses of beer on the bar, together with other empty glasses. The agents seized two glasses of beer from patrons.

In mitigation, defendant's wife, who was in charge of the premises, alleges that she turned out all the lights, except one light over the bar, and drew the Venetian blinds, at or before midnight. From the reports of the investigators, this appears to have been the case. The patrons who were present at 12:00 midnight were permitted, however, to tarry and to consume alcoholic beverages previously served until the ABC agents entered the tavern.

The failure of a licensee to obey the command to stop the service of liquor by 12:00 midnight and to close the licensed premises to the public at that time constitutes a violation of Regulations No. 40, in addition to being directly contrary to the national policy. Regulations No. 40 were promulgated to insure an impartial and strict enforcement of the "Byrnes request." I have been pleased by the wide public acceptance and approval of the Regulations. It is apparent that the overwhelming majority of our licensees are loyally observing the letter and spirit of the law.

There are few, if any, mitigating circumstances in this case, and hence I shall suspend the license for a period of fifteen days, less five days for the plea, making a net suspension of ten days.

Accordingly, it is, on this 15th day of March, 1945,

ORDERED, that Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Knowlton to George R. Werkheiser, t/a Log Cabin Inn, for premises on Route 8, Knowlton Township, be and the same is hereby suspended for ten (10) days, commencing at 12:01 a.m. March 20, 1945, and terminating at 12:01 a.m. March 30, 1945.

ALFRED E. DRISCOLL
Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 40 - PERMITTING LICENSED PREMISES TO REMAIN OPEN, IN VIOLATION OF RULE 2 OF STATE REGULATIONS NO. 40 - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against
THERESA BRUNE
T/a PEANUT BAR
29-31 Harrison Ave.
Harrison, N. J.,
Holder of Plenary Retail Consumption License C-4, issued by the Town Council of the Town of Harrison.

CONCLUSIONS
AND ORDER.

Theresa Brune, Defendant-licensee, Pro se.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee pleaded guilty to the following charges:

"1. Between 12 o'clock midnight, Saturday, March 3, 1945 and 7:00 a.m. Sunday, March 4, 1945, viz., until at least 12:25 a.m. of the latter date, you sold, served and

delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages and permitted the consumption of alcoholic beverages upon the licensed premises, in violation of Rule 1 of State Regulations No. 40.

"2. Between 12 o'clock midnight, Saturday, March 3, 1945 and 7:00 a.m. Sunday, March 4, 1945, viz., until at least 12:25 a.m. of the latter date, you failed to have your entire premises closed and you permitted persons other than yourself and your bona fide employees to be and remain on the licensed premises, in violation of Rule 2 of State Regulations No. 40."

Regulations No. 40 prohibit the sale, service, delivery and consumption of alcoholic beverages upon licensed premises between 12:00 o'clock midnight and 7:00 a.m. and require that, during those hours, the licensed premises shall be closed and no persons other than the licensee and his employees shall remain thereon.

It appears that, approximately twenty minutes past midnight, on the morning of March 4, 1945, an ABC agent entered the defendant's tavern. Two patrons at the bar were talking with the bartender, Leon Brune, husband of the licensee. The agent ordered and was served a glass of beer. Five minutes later, a second ABC agent entered and was refused service by the bartender.

From the reported facts, there was here no apparent attempt to adopt any of the "speakeasy" tactics generally employed in an effort to cater to customers seeking nocturnal pleasures after permissible hours. Where this kind of deliberate "chiseling" practice is employed, the punishment will be commensurate with the callousness of the offense.

The regulations, however, must be scrupulously obeyed. They were designed to implement the nation-wide "request" of War Mobilization Director Byrnes. See Bulletin 655, Item 1. The regulations serve a twofold purpose: (1) To insure the "even-handed" enforcement of the nation-wide policy as announced by Director Byrnes, and (2) to protect the great majority of loyal and patriotic licensees against the unfair competition of a few "chiselers."

Any violation of these regulations, therefore, whether aggravated or not, interferes with the national policy and, to that extent, presents a more serious type of misconduct than does the ordinary violation of a normal closing regulation.

The defendant's license will be suspended for a period of fifteen days, less five days for the plea. In more aggravated cases the suspension may be expected to be commensurately higher.

Accordingly, it is, on this 15th day of March, 1945,

ORDERED, that Plenary Retail Consumption License C-4, issued by the Town Council of the Town of Harrison to Theresa Brune, t/a Peanut Bar, for premises 29-31 Harrison Avenue, Harrison, be and the same is hereby suspended for a period of ten (10) days, commencing at 12:01 a.m. March 20, 1945, and terminating at 12:01 a.m. March 30, 1945.

ALFRED E. DRISCOLL
Commissioner.

8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 40 - PERMITTING LICENSED PREMISES TO REMAIN OPEN, IN VIOLATION OF RULE 2 OF STATE REGULATIONS NO. 40 - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

PATRICK MORRISSEY
1096 Avenue C
Bayonne, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-152 issued by the Board of Commissioners of the City of Bayonne.

Bernard D. Dugan, Jr., Esq., Attorney for Defendant-licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to charges alleging that he sold alcoholic beverages and permitted his licensed premises to remain open between midnight and 7:00 a.m. on Monday, March 5, 1945, in violation of Rules 1 and 2 of State Regulations No. 40.

On the morning in question, at about 12:25 a.m., ABC agents and a Lieutenant of the Bayonne Police Department observed that defendant's premises were well lighted. They looked in and saw a man at the bar with a small glass in front of him. Upon entering they found the licensee and the man, who was not an employee of the licensee, on the premises. The licensee contends that he had excluded all other patrons before midnight but had permitted the man, an old friend, to remain to help him clean up. The licensee admits that he served a drink of whiskey to his friend after midnight.

Licensee has a prior record. In April 1939 the local issuing authority suspended his license for five days for selling during prohibited hours and permitting gambling on his licensed premises. In January 1943 the local issuing authority again suspended his license for five days for selling during prohibited hours. I have carefully considered the argument made by the licensee and his attorney as to the alleged mitigating circumstances in the present curfew violation, which is the third violation of a similar character. Considering the prior record of the licensee, I shall suspend his license, in this proceeding, for forty days, less five days for the plea, making a net suspension of thirty-five days. Any further violations of any kind may well result in revocation of his license.

Accordingly, it is, on this 15th day of March, 1945,

ORDERED, that Plenary Retail Consumption License C-152, issued by the Board of Commissioners of the City of Bayonne to Patrick Morrissey, for premises 1096 Avenue C, Bayonne, be and the same is hereby suspended for thirty-five (35) days, commencing at 12:01 a.m. March 20, 1945, and terminating at 12:01 a.m. April 24, 1945.

ALFRED E. DRISCOLL
Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 40 - PERMITTING LICENSED PREMISES TO REMAIN OPEN, IN VIOLATION OF RULE 2 OF STATE REGULATIONS NO. 40 - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

RALPH D. CHILDREY, JR. and)
LORETTA A. CHILDREY)
1819 Broadway)
Camden, N. J.,)

CONCLUSIONS
AND ORDER

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Holders of Plenary Retail Consump-)
tion License C-12, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Camden.)
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Milton C. Nurock, Esq., Attorney for Defendant-licensees.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendants pleaded non vult to charges alleging that they sold alcoholic beverages, and permitted their licensed premises to remain open, between midnight and 7:00 a.m. on Sunday, March 4, 1945, in violation of Rules 1 and 2 of State Regulations No. 40.

On the morning in question, at about 12:20 a.m., Mrs. Childrey was observed serving two glasses of beer to patrons in the rear sitting room. The premises were well lighted. Mr. Childrey, who was behind the bar checking the receipts, was the only person in the bar-room. The explanation given to the agents was that the patrons were personal friends of Mr. Childrey and were waiting for him to drive them home.

The regulation, translating the Byrnes "request" into law in this State, is clear and unequivocal. It will be strictly enforced. The agents of the Department of Alcoholic Beverage Control have been instructed not to permit it to be "fritted away" by excuses, alibis or exceptions. The defendants in this case appear to have a clear record previous to the present violation. Accordingly, I will impose a fifteen-day suspension, with remission of five days for the plea, or a net suspension of ten days.

Accordingly, it is, on this 15th day of March, 1945,

ORDERED, that Plenary Retail Consumption License C-12, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Ralph D. Childrey, Jr. and Loretta A. Childrey, for premises 1819 Broadway, Camden, be and the same is hereby suspended for a period of ten (10) days, commencing at 12:01 a.m. March 20, 1945, and terminating at 12:01 a.m. March 30, 1945.

ALFRED E. DRISCOLL
Commissioner.

10. APPELLATE DECISIONS - MASSA v. NORTH BERGEN TOWNSHIP AND MASSA.

THERESA MASSA,
T/a MASSA'S TAVERN,)

Appellant,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE TOWNSHIP)
OF NORTH BERGEN and LOHENGRIN R.)
MASSA,)

Respondents.)

Mitchell Cahn, Esq., Attorney for Appellant.
Thomas F. Norton, Esq., Attorney for Respondent, Lohengrin R. Massa.

BY THE COMMISSIONER:

This is an appeal from the transfer by the Municipal Board of Alcoholic Beverage Control of the Township of North Bergen of a plenary retail consumption license to the respondent, Lohengrin R. Massa, for premises 8409 Hudson Boulevard, North Bergen.

The appellant is the estranged wife of Hamlet Massa, brother of the respondent, Lohengrin R. Massa. In March 1944 she purchased from her husband a tavern located at 7420 Hudson Boulevard, North Bergen, and has since then operated that business in her own name. In the agreement of sale, the husband agreed "not to engage in the tavern... business, directly or indirectly,.....as owner.....within a radius of two (2) miles.....of the business herein sold, for a period of five (5) years....."

In August 1944 Lohengrin Massa commenced negotiations for the purchase of the premises involved herein from one Mathias Herrmann. In an attempt to obtain evidence of a breach by her husband of the aforesaid restrictive covenant, the appellant employed a private detective agency. Four of its operatives visited respondent's tavern on various occasions between August 9 and August 21, 1944, the latter date being eight days prior to the actual transfer of the license from Mathias Herrmann to the respondent Lohengrin Massa.

As a result of the investigation made by these private detectives, the appellant now contends that her husband, Hamlet Massa, has an undisclosed interest in the license and business conducted at 8409 Hudson Boulevard, North Bergen, in the name of Lohengrin Massa, and for that reason, among others, the application should have been denied by the respondent municipality.

The testimony of these four operatives presents a close question on this issue. In sum, they testified that, on separate occasions, both the former owner of the tavern and one of the bartenders referred to Hamlet Massa as the "new owner" and that several of the patrons recognized him as the "boss." On most of their visits to the tavern, Hamlet Massa was present, frequently waiting on tables and entertaining the customers with songs. They admit, however, that the daily receipts were checked either by Lohengrin Massa or a bartender and never by Hamlet Massa.

Both the former owner and the bartender denied that they had ever stated that Hamlet Massa was the "new owner." The former testified that all of his negotiations were with Lohengrin Massa and that

all of the moneys for the purchase of the tavern were paid by the latter, either in cash or by check.

Lohengrin Massa affirmed that the business belonged solely to him and was purchased from joint funds saved by himself and his wife. Similar testimony was given by his wife. Hamlet Massa testified that he had no proprietary interest whatever in his brother's license or the business conducted thereunder and explained that he visits the tavern only because of his natural desire to see that his brother makes a success of the venture.

There is a strong suspicion that Hamlet Massa has more than a mere fraternal interest in his brother's business. However, evidence to sustain a finding of "front", which involves a serious fraud upon the public generally and the issuing authority specifically, must be clear, concise and convincing. The suspicions and inferences which may be deduced from the testimony of the private detectives are not supported by any documentary evidence whatever, and do not measure up to the standard of proof required to sustain an issue of this type. Cf. Calabrese v. Newark, Bulletin 506, Item 10, where I reversed a refusal to transfer which was based upon the ground that the appellant therein was a "front" for his brother.

The only other contention of the appellant which requires consideration is that the respondent, Lohengrin Massa, was "in full control of the business.....from August 12, 1944 to August 29, 1944, prior to the transfer of the license...." Without deciding whether this would be a sufficient warrant for reversing the action of the local issuing authority in granting the transfer in question, it is only necessary to say that it is not supported by the proof. The only testimony on this score came from the former owner who stated that, although he permitted Lohengrin Massa free access to the premises between August 12 and August 29, 1944 so that the latter could acquaint himself with the operation of the business, all of the receipts belonged to him until the actual transfer of the license on August 29, 1944.

The action of the respondent Board in approving the application for transfer of the license herein is affirmed.

Accordingly, it is, on this 16th day of March, 1945,

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

Alfred E. Driscoll
-Commissioner.