

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

BULLETIN 600

JANUARY 5, 1944.

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DEPARTMENT OF THE ARMY, WASHINGTON, D. C. 20315
OFFICE OF THE CHIEF OF STAFF, WASHINGTON, D. C. 20315
TO: THE SECRETARY OF THE ARMY, WASHINGTON, D. C. 20315

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

BULLETIN 600

JANUARY 5, 1944.

1. DISCIPLINARY PROCEEDINGS - STATE LICENSEE - FAILURE TO FACILITATE EXAMINATION BY STATE TAX COMMISSIONER, IN VIOLATION OF R. S. 54:45-2 - FAILURE TO KEEP AND PRESERVE RECORDS, IN VIOLATION OF R. S. 54:45-2 - FAILURE TO FILE PROPER REPORT, IN VIOLATION OF R. S. 54:45-1 - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION FOR AN ORDER REINSTATING THE LICENSE UPON EXPIRATION OF TEN DAYS AND PAYMENT OF COMPROMISE FEE.

In the Matter of Disciplinary Proceedings against
MAJESTIC WINE & SPIRITS, INC.
1423 Ferry Avenue
Camden, N. J.,
Holder of Plenary Wholesale License W-110, issued by the State Commissioner of Alcoholic Beverage Control.

CONCLUSIONS
AND ORDER

Frazer, Stoffer & Jacobs, Esqs., Attorneys for the Defendant, by
David Stoffer, Esq.
Nathan Davis, Esq., Attorney for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

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

"1. You failed to facilitate, as far as it was in your power, an examination and investigation begun by the State Tax Commissioner on or about June 21, 1943 of the books, records, papers, vouchers, accounts and documents in your plenary wholesale licensed business, in that you, after such examination and investigation was begun, destroyed, concealed, changed and failed to exhibit various of your aforesaid records; such failure being in violation of R. S. 54:42-2.

"2. You failed, since at least September 1942 and through June 1943, to keep and also failed safely to preserve for five years in such manner as to insure permanency and accessibility for inspection by the State Tax Commissioner or any duly authorized employee of said Commissioner complete and accurate records of all alcoholic beverages purchased, sold, manufactured, stored, warehoused, withdrawn from storage, imported and transported; such failure being in violation of R. S. 54:45-2.

"3. You failed to file with the State Tax Commissioner a requisite report for the month of May 1943 disclosing the actual amount of alcoholic beverages distributed, transported, stored, warehoused, withdrawn from storage, imported, purchased and sold by you; such failure being in violation of R. S. 54:45-1."

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

Subtitle 8 of Title 54 of the Revised Statutes, known as the Alcoholic Beverage Tax Law, provides (inter alia) that wherever any licensee "fails to comply with any provision of" subtitle 8 "or with any rule or regulation made by the (State Tax) commissioner pursuant to * * *" subtitle 8 "notice whereof has been given to such licensee, the (State Tax) commissioner may forward a statement of facts showing such default to the authority which issued such license and request the suspension or the revocation of the license on account of such default, whereupon the license may be suspended or revoked.**" (R. S. 54:47-7).

In the instant case, following an examination of the books and records of the defendant by representatives of the Beverage Tax Division and agents of the Department of Alcoholic Beverage Control, the Director of the Beverage Tax Division, acting for and on behalf of the State Tax Commissioner, after notice to the defendant, forwarded to the State Commissioner of Alcoholic Beverage Control a statement of facts setting forth certain violations by the defendant of subtitle 8 and the regulations promulgated pursuant thereto. Incorporated in this statement was a request by the Director that the defendant's license be suspended or revoked.

The defendant's license was issued by the State Commissioner of Alcoholic Beverage Control pursuant to the provisions of R. S. 33:1-18.

Title 33 of the Revised Statutes covering Intoxicating Liquors provides (inter alia) that any license issued by the State Commissioner may be suspended or revoked in the manner prescribed therein (R. S. 33:1-31) for "Failure to comply with any of the provisions of subtitle 8 of the title Taxation (54:41-1 et seq.)."

The record before me, to which I have referred for the purpose of fixing the penalty, discloses that certain of the responsible officers and agents then charged with the management of the defendant (prior to July 1943) had apparently ordered or directed excessive quantities of liquor to be charged to "breakage." These misleading entries on the records of the corporation were out of all proportion to the previous "breakage" experience of the licensee. I suspect that a large proportion of this alleged "breakage" actually found its way into improper or illegal channels. The conduct of the then officers and agents of the defendant following the institution of the investigation by representatives of the Beverage Tax Division tends to confirm my suspicion.

Entirely apart, however, from the question of the improper and perhaps illegal distribution of a very substantial amount of alcoholic beverages by the defendant, it is apparent that the officers in question not only failed to cooperate with the State in its investigation of the defendant's books and records but actually and affirmatively sought to thwart the investigation by the destruction, alteration or concealment of important records and documents. The defendant is engaged in a privileged business. When defendant's plain duty called for cooperation with agents of the State of New Jersey it not only failed to cooperate, but, on the contrary, its responsible officers entered into a conspiracy to frustrate, delay and nullify the work of the agents of the Beverage Tax Division and the Department of Alcoholic Beverage Control.

The primary purpose of the Department of Alcoholic Beverage Control is to protect the citizens of this State against the evils which are generally recognized as accompanying the disorderly and

uncontrolled trafficking in liquor. Absence of adequate records as required by the regulations makes the task of enforcement more difficult and contributes to a disorderly market which, in the long run, tends to undermine the license system. The failure of the defendant to keep and maintain proper records reasonably available to the agents of the State cannot be permitted to go unpunished. To hold otherwise would be to open the door wide to all manner of violations and would ultimately lead to a complete breakdown in enforcement.

The charges in this case, therefore, while apparently technical in character, go to the very heart of liquor control. This is particularly true during these years when the Nation is preoccupied with the Herculean task of waging war. The obvious temptations attendant on a period of great scarcity of supply and increasing consumer demand must be met by a scrupulous observance of all laws and regulations.

I can no more condone the destruction or alteration of the records or the suppression of material facts than I can forgive the improper conduct that defendant's officers and agents may have sought to have concealed. The destruction or alteration of records, and the suppression of material facts, and the failure to cooperate with the agents of the State raises an inference which must be resolved against the defendant.

The licensee represents that the officers responsible for the violations charged are no longer associated with it. While this fact is entitled to consideration, it must be noted that, in these disciplinary (not criminal) proceedings, the doctrine of respondet superior applies with full force and effect. The licensee is responsible for the acts of its agents. The decision of the Supreme Court in State v. Pinto, 129 N.J.L. 255, is neither applicable nor controlling in these proceedings.

For the purpose of the record, it is noted that the present officers and directors of the licensee, upon being informed of the true state of affairs, cooperated with the representatives of the Beverage Tax Division and apparently provided, in so far as it was then possible, the information sought by the investigators. Nonetheless a corporate licensee cannot permit its officers, over a period of time, to conduct its affairs contrary to the express provisions of applicable statutes and regulations without assuming responsibility for the resultant violations.

It is the duty of the Commissioner "to supervise the manufacture, distribution and sale of alcoholic beverages in such a manner to promote temperance and eliminate the racketeer and bootlegger." (R. S. 33:1-5). The Alcoholic Beverage Law is intended to be remedial of the abuses inherent in the liquor traffic and should be liberally construed (R. S. 33:1-73).

The Legislature has wisely armed the Commissioner with broad discretionary powers, including specific authorization to "take and adopt all * * * acts, procedures and methods designed to insure the fair, impartial, stringent and comprehensive administration" of the Alcoholic Beverage Law (R. S. 33:1-23).

Likewise, the Commissioner, in contrast to other issuing authorities, is specifically empowered to "make such general rules and regulations and such special rulings and findings as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages and the enforcement of" the Alcoholic Beverage Law (R. S. 33:1-39).

Subject to the findings and special ruling hereinafter set forth, the defendant's license will be suspended for the balance of its term.

After carefully considering the whole problem, I have reached the conclusion and accordingly find and rule that a fair, impartial and comprehensive administration of the Alcoholic Beverage Law will best be served by permitting the defendant, a State licensee, to petition for an order reinstating its license after it has served ten full days of the suspension and upon the payment of a compromise fee to the Department of Alcoholic Beverage Control in the amount of Five Thousand (\$5,000.00) Dollars.

In view of the informal rationing system now applicable within the industry and for the purpose of protecting retail licensees, the defendant, upon the filing of the petition aforesaid and the payment of the compromise fee, will be permitted to receive alcoholic beverages at its licensed premises. During the period of the suspension, the defendant may not otherwise engage in the distribution or sale of alcoholic beverages or exercise any of its license privileges.

This ruling is applicable only to the facts in this case and is not to be regarded as a precedent in future cases involving different facts and circumstances.

Accordingly, it is, on this 23rd day of December, 1943,

ORDERED, that Plenary Wholesale License W-110, issued to Majestic Wine & Spirits, Inc. 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. December 27, 1943, with leave reserved to defendant to petition for the reinstatement of its license in accord with the finding and special ruling set forth in the conclusions.

ALFRED E. DRISCOLL
Commissioner.

- 2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 AND LOCAL ORDINANCE - PERMITTING PREMISES TO REMAIN OPEN, IN VIOLATION OF LOCAL ORDINANCE - PREVIOUS RECORD - 40 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

DONATO DIGIACOMO)
2 Prospect Place)
Newark, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-197 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
-----)

Nicholas T. Fernicola, Esq., Attorney for Defendant-Licensee.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee has entered a plea of guilty to charges alleging that (1) on Sunday, October 17, 1943, between the hours of

9:45 A.M. and 10:20 A.M., he sold and delivered alcoholic beverages in original containers for consumption off the licensed premises, in violation of Rule 1 of State Regulations No. 38; (2) at the time aforesaid, he sold, served and delivered alcoholic beverages upon his licensed premises in violation of an ordinance of the City of Newark which prohibits the sale, service and delivery of alcoholic beverages between the hours of 2:00 A.M. and noon on Sundays; (3) that his licensed premises were open at the time aforesaid, in further violation of said ordinance.

The file in this case discloses that on Sunday, October 17, 1943, the licensee admitted an ABC investigator to the licensed premises through the hallway door. While the investigator was present, the licensee sold two one-quart bottles of beer to one patron, a bottle of wine to a second patron, and a bottle of whiskey to a third patron, all of whom left the premises with their purchases. Thereafter the licensee sold a glass of whiskey to this investigator, and a glass of whiskey to a second investigator who had entered the premises in the meantime.

In alleged mitigation defendant says that on the Sunday morning in question he was cleaning his place of business preparatory to opening for the day, with no intention of conducting any business until the proper hour had arrived. On the contrary, the facts disclose that, during prohibited hours, he was doing a rather substantial amount of business, in defiance of the provisions of the State Regulations and the local ordinance.

The licensee has a prior record. In June 1935 the local issuing authority suspended his license for a period of one day for possession of illicit liquor. In March 1939 the Commissioner of Alcoholic Beverage Control suspended his license for a period of ten days after he pleaded non vult to charges of keeping his licensed premises open and selling alcoholic beverages therein on Sunday, in violation of a local ordinance. Under all the circumstances and considering the prior record, I shall suspend his license for the instant violations for a period of forty days. Cf. Re Luker, Bulletin 592; Item 8, where a sixty-day penalty was imposed in a case which is distinguished from the present case merely by reason of the fact that defendant therein admitted that he had openly defied the local ordinance for "quite some time." Because of the plea entered in the present case, and the consequent saving of time to the Department, I shall remit five days of the forty-day penalty imposed in this case, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 28th day of December, 1943,

ORDERED, that Plenary Retail Consumption License C-197, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Donato DiGiacomo for premises 2 Prospect Place, Newark, be and the same is hereby suspended for thirty-five (35) days, commencing at 2:00 A.M. January 4, 1944, and terminating at 2:00 A.M. February 8, 1944.

ALFRED E. DRISCOLL
Commissioner.

3. 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 - ILLEGAL SITUATION CORRECTED - PREVIOUS RECORD - 15 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against
 CARRIE AHLERS
 939 Bay Avenue
 Somers Point, N. J.,
 Holder of Plenary Retail Consumption License C-8, issued by the Common Council of the City of Somers Point and transferred during the pendency of these proceedings to
 CARRIE AHLERS and KATHERINE SCHICK,
 T/a SCHICK'S CAFE
 for the same premises.

CONCLUSIONS AND ORDER

Lewis P. Scott, Esq., Attorney for Defendant-Licensee.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant entered a plea of non vult to charges that she concealed the interest of Katherine Schick in the licensed premises and knowingly aided and abetted the said Katherine Schick to exercise the rights of her license.

The defendant and the said Katherine Schick are sisters. The licensed business is conducted for their joint benefit and support, having been transferred from Katherine Schick, individually, to Carrie Ahlers, individually, some time in June 1941, at which time Miss Ahlers became interested in the business. The license was applied for in the individual name of Carrie Ahlers because, as Miss Ahlers admits in her statement, "Katherine Schick was afraid at that time of having anything in her name because of some mortgage judgments she thought might be put on record against her."

Apparently Mrs. Schick was at all times fully qualified to hold the license. The Department has been notified that the license has now been transferred to Carrie Ahlers and Katherine Schick, jointly. This, as appears from the facts before me, properly corrects the situation.

Ordinarily, in "front" cases of this kind, I would impose a penalty of ten days' suspension on a finding of guilt. Cf. Re Briggs, Bulletin 580, Item 3, and cases cited. However, in 1943 Carrie Ahlers' license was suspended by the local issuing authority for ten days upon a finding of guilt on a charge of sale to minors. Under the circumstances, I shall suspend the license now held by Carrie Ahlers and Katherine Schick for a period of fifteen days. Re Ganzanese, Bulletin 582, Item 7.

Accordingly, it is, on this 28th day of December, 1943,

ORDERED, that Plenary Retail Consumption License C-8, issued by the Common Council of the City of Somers Point to Carrie Ahlers, for premises 939 Bay Avenue, Somers Point, and transferred during the pendency of these proceedings to Carrie Ahlers and Katherine Schick, t/a Schick's Cafe, for the same premises, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 A.M. January 3, 1944 and terminating at 2:00 A.M. January 18, 1944.

ALFRED E. DRISCOLL
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 AND LOCAL ORDINANCE - 30 DAYS' SUSPENSION, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
PATRICK HEALEY
284 Watchung Avenue
Orange, N. J.,
Holder of Plenary Retail Consumption License C-65, issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange.

CONCLUSIONS
AND ORDER

Patrick Healey, Pro Se.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee offered a plea of non vult to the following charges: (1) That, on Sunday, October 24, 1943, between 2:00 A.M. and 2:20 A.M. he sold, served and delivered, and allowed, permitted, and suffered the sale, service and delivery of alcoholic beverages, and allowed the consumption of alcoholic beverages on his licensed premises, in violation of an ordinance of the City of Orange; and (2) that, on the same day, he sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage at retail in its original container for consumption off the licensed premises, in violation of Rule 1 of State Regulations No. 38.

I shall accept the plea as fully equivalent to a plea of guilty for the purpose of the instant violations.

An examination of the record shows that on Sunday, October 24, 1943, between the hours of 2:00 A.M. and 2:20 A.M., alcoholic beverages were sold at the bar of the licensed premises. The ordinance of the City of Orange provides that no sales, service or consumption shall be allowed on Sunday between 2:00 A.M. and 1:00 P.M. It further appears that a bottle of beer in its original container was sold for consumption off the licensed premises at about 2:20 A.M. on the said Sunday, in violation of State Regulations No. 38.

The licensee has no previously adjudicated record and I shall impose the minimum suspension for these violations. The two violations constitute two separate offenses. Cf. Wayne v. United States, 138 F. 2d 1. Each of these offenses carries a minimum penalty of fifteen days' suspension, Re Disbrow, Bulletin 540, Item 3; Re Gattuso, Bulletin 587, Item 1, making a total suspension of thirty days. Five days thereof shall be remitted for the plea, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 28th day of December, 1943,

ORDERED, that Plenary Retail Consumption License C-65, issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange to Patrick Healey, for premises 284 Watchung Avenue, Orange, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 2:00 A.M. January 3, 1944 and terminating at 2:00 A.M. January 28, 1944.

ALFRED E. DRISCOLL
Commissioner.

5. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - VARIATION IN SOLIDS, ACIDS AND COLORING - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against

SAMUEL OPRANDY & J. PETER OPRANDY
T/a HIGHWOOD TAVERN
12 East Hudson Avenue
Englewood, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-15 issued by the Common Council of the City of Englewood.

Samuel Oprandy and J. Peter Oprandy, Pro Se.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensees pleaded guilty to a charge alleging that, on September 28, 1943, they possessed a quart bottle labeled "Wilson 'That's All' Blended Whiskey", a quart bottle labeled "Three Feathers Blended Whiskey", a 4/5th quart bottle labeled "Hunter Baltimore Rye Blended Whiskey", and a quart bottle labeled "Calvert Private Stock Blended Whiskey", all of which contained alcoholic beverages which were not genuine as labeled, in violation of R. S. 33:1-50.

It appears that, on the night in question, Federal agents tested a number of bottles at the premises of the licensees and found four of them, as above mentioned, unsatisfactory. Subsequent analysis by the Federal chemist showed that the contents of these bottles differed substantially in the amounts of solids, acids and percentages of artificial coloring from authentic samples.

Samuel Oprandy, one of the licensees, testified that he was in charge of the premises on the night in question and, not feeling very well, about 8:30 in the evening requested one of his customers to operate the premises until such time as he felt that his brother, J. Peter Oprandy, the other licensee, would arrive to take over the business. The brother did not show up all evening, and the friend who was impressed as a bartender operated the place until closing time. The volunteer bartender, at the hearing, testified that, as the evening progressed, the particular bottles in question became empty and he refilled two of them from a bottle of Austin Nichols Harvest and two of them from a bottle of Union Leader, explaining that the whiskeys were all the same price and that he did not think it made very much difference. The statement given by Samuel Oprandy to an inspector of the Alcohol Tax Unit varies somewhat but, in view of the plea of guilty entered, the variance does not become material.

As far back as Re Kneller, Bulletin 49, Item 4, the late Commissioner said:

"A licensee, when apprehended for violation of the law, may not hide behind the cloak of his employees. The license is his. So is the business. It is his duty to see to it that the business is conducted in accordance with the law."

I shall suspend the license for ten days.

Accordingly, it is, on this 28th day of December, 1943,

ORDERED, that Plenary Retail Consumption License C-15, issued by the Common Council of the City of Englewood to Samuel Oprandy and J. Peter Oprandy, t/a Highwood Tavern, for premises 12 East Hudson Avenue, Englewood, be and the same is hereby suspended for ten (10) days, commencing at 1:00 A.M. January 4, 1944, and concluding at 1:00 A. M. January 14, 1944.

ALFRED E. DRISCOLL
Commissioner.

6. MORAL TURPITUDE - CRIME OF OPERATING ILLICIT STILL FOUND TO INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - APPLICATION TO LIFT DENIED.

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

CONCLUSIONS
AND ORDER

Case No. 309.
- - - - -)

BY THE COMMISSIONER:

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

The Federal Treasury Department records disclose that applicant was convicted in the Federal District Court of New Jersey for the operation, in 1934, of two illicit stills, one having a capacity of 648 gallons and the other 2,000 gallons, respectively. As a result of this conviction, applicant was sentenced, on May 8, 1935, to serve a term of one year and one day in the Federal Penitentiary, being released, however, after serving ten months thereof. Inasmuch as the State Alcoholic Beverage Control Law was enacted to eliminate the bootlegger and racketeer, it is quite obvious that a person convicted of a violation of a Federal law such as the one in question, has committed a crime involving moral turpitude.

In the petition filed herein applicant divulged this conviction but neglected to disclose that, on April 29, 1935, he was placed on probation by a police judge for uttering and delivering worthless checks and he was ordered to make restitution. Applicant, in answer to a question propounded by his attorney at the hearing as to whether he had ever been arrested or convicted of a crime other than the Federal offense or whether he had ever been involved in any other

trouble, replied "No." When he was confronted, however, with the fact that the fingerprint returns from the files of the State Bureau of Identification revealed that a person with a similar name had been convicted of passing worthless checks, applicant admitted that he was the person involved. His explanation at the hearing for not including this offense in his petition was that he didn't think it was a crime as it was a business transaction and he felt that he was not at fault but took the responsibility.

Before using my discretion to remove an existing disqualification because of a conviction of a crime involving moral turpitude pursuant to the statute, the petitioner must prove to my entire satisfaction that he has not only been law-abiding for a period of five years since his last conviction of crime but must be trustworthy as well. In the instant case, applicant failed to make a full disclosure of his record until the worthless check incident was called to his attention. His testimony was not very impressive and his attitude in withholding information is open to suspicion.

Under the circumstances, I shall not exercise at this time the discretion vested in me by the legislature to remove petitioner's disqualification. (R. S. 33:1-31.2)

Accordingly, it is, on this 28th day of December, 1943,

ORDERED, that the petition be and the same is hereby dismissed with leave granted to petitioner to file a new petition and to present additional evidence after the expiration of six months from the date hereof.

ALFRED E. DRISCOLL
Commissioner.

7. MORAL TURPITUDE - CRIME OF OPERATING AN UNREGISTERED STILL IN 1937 FOUND TO INVOLVE MORAL TURPITUDE.

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 be-)
cause of a Conviction, pursuant)
to R. S. 33:1-31.2.)

CONCLUSIONS
AND ORDER

Case No. 307.

BY THE COMMISSIONER:

In May 1938 petitioner pleaded guilty in a Federal court to the crime of operating an unregistered still in October 1937, and was sentenced to pay a fine of \$50.00 and placed on probation for five years. At the hearing petitioner testified that in October 1937 he had been employed in a garage which was connected with another building in which a still was found. He testified also that he had no knowledge of the existence of the still. However, the question of his guilt or innocence cannot be redetermined in this proceeding. The crime involved moral turpitude. Apparently petitioner was not fingerprinted, as his fingerprint returns disclose no convictions.

Petitioner represents that he has been law-abiding for at least five years last past and hence, pursuant to R. S. 33:1-31.2, seeks

removal of his disqualification from working for a liquor licensee or holding a liquor license in this State by reason of his conviction of a crime involving moral turpitude.

Petitioner operated a fruit and produce store during the summer months from 1936 until July 1943, when he was inducted into the armed forces. In September 1943 he was honorably discharged because of a physical disability. He is not married and lives with his mother.

Two members of the Police Department in the municipality where petitioner resides, who have known him for more than twelve years, each testified that during the last five years petitioner has conducted himself in a law-abiding manner, has had a good reputation in the community, and the local police have received no complaints against him. Similar testimony was given by a paperhanger who has known petitioner socially for about twenty-five years.

I find that petitioner has conducted himself in a law-abiding manner during the six years immediately past. I conclude that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 29th day of December, 1943,

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

ALFRED E. DRISCOLL
Commissioner.

8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)
LOUIS & FRANK MALANG)
South Washington Avenue)
Piscataway Township)
P.O. RFD #2, New Brunswick, N.J.,)
Holder of Plenary Retail Consumption License C-11 for the fiscal year 1942-43 and now holder of Plenary Retail Consumption License C-11 for the current (1943-44) year, both issued by the Township Committee of Piscataway Township.)
-----)

CONCLUSIONS
AND ORDER

Edmund A. Hayes, Esq., Attorney for Defendant-Licensees.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendants plead not guilty to the following charges:

"1. On or about February 6, 1943, and on or about February 8, 1943, you sold alcoholic beverages to Rose --- and Sophie ---, minors, in violation of R. S. 33:1-77.

"2. On or about the dates aforesaid you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to Rose --- and Sophie ---, 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. On or about the dates aforesaid, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to Rose ---, Sophie --- and a soldier companion, persons who were actually or apparently intoxicated, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons on the licensed premises, in violation of Rule 1 of State Regulations No. 20."

Rose --- testified that, on Monday, February 8, 1943, she visited defendants' premises in the company of Sophie ---, a soldier and a civilian. Rose --- was then twenty years and ten months of age, and Sophie --- was eighteen years and nine months of age. Rose --- further testified that, after the party entered the licensed premises, a number of drinks of alcoholic beverages were served to her and to Sophie --- by Frank Malang and a waitress. She denied, however, that she was intoxicated when served.

Sophie --- testified that on Monday, February 8, 1943, a number of drinks of alcoholic beverages were sold to her and to Rose --- by Frank Malang and the waitress. She also denied that she was intoxicated when served.

Both of the minors testified that alcoholic beverages had been sold to the soldier while he was in an intoxicated condition. The testimony of the soldier was not available because he was on active duty at the time of the hearing held herein.

On behalf of defendants, Louis Malang, one of the licensees, testified that both of these minor girls had been on the licensed premises on the evening of Saturday, February 6, 1943, and that he was not present in the licensed premises on the evening of Monday, February 8, 1943. The waitress testified that the two minor girls visited the licensed premises on the evening of Saturday, February 6, 1943, accompanied by two soldiers, one of whom was intoxicated, and a civilian. She further testified that, at that time, the girls were served with soft drinks and that no alcoholic beverages were served to the intoxicated soldier. Frank Malang, the other licensee, claims that he had never seen either of the girls until April 2, 1943, when they visited the licensed premises accompanied by Departmental investigators and a county detective for the purpose of identification.

Upon the record herein, there is no evidence to sustain a finding of guilt as to any of the charges in so far as said charges concern events which occurred on February 6, 1943. From the evidence, however, I conclude that alcoholic beverages were served to both minor girls on the licensed premises on February 8, 1943. Frank Malang and the waitress both admit that they were present on the licensed premises on that date. On April 2, 1943 the girls identified them as the persons who had made the sales. It is true, as defendants point out in a memorandum submitted herein, that there are certain minor discrepancies in the testimony given by the two girls, and it may also be true that they are persons of "questionable integrity and morals." However, their testimony that they were served alcoholic beverages on the licensed premises on February 8, 1943 was not shaken despite severe cross-examination, and their testimony, in

that respect at least, appears to be truthful. Hence, I find defendants guilty as to charges (1) and (2) in so far as said charges concern the sale of alcoholic beverages to these minors on February 8, 1943.

After considering all the evidence, I am in grave doubt as to whether it is sufficient to sustain the charge of selling alcoholic beverages to persons actually or apparently intoxicated. The evidence as to that charge is weak. The Department is further handicapped by reason of the fact that it was unable to produce the soldier who is involved in the case. Under all the circumstances I shall give the licensees, whose previous record is clear, the benefit of the doubt as to this charge and shall dismiss the third charge preferred herein.

As to penalty: Since no aggravating circumstances attended the sale to Rose ---, who was nearly twenty-one years of age, and to Sophie ---, who was approximately nineteen years of age, the minimum penalty of ten days will be imposed.

Accordingly, it is, on this 29th day of December, 1943,

ORDERED, that Plenary Retail Consumption License C-11, issued by the Township Committee of Piscataway Township to Louis and Frank Malang for premises on South Washington Avenue, Piscataway Township, be and the same is hereby suspended for ten (10) days, commencing at 2:00 A.M. January 4, 1944 and terminating at 2:00 A.M. January 14, 1944.

ALFRED E. DRISCOLL
Commissioner.

9. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - PERMITTING NON-LICENSEE (ALIEN) TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - ILLEGAL SITUATION CORRECTED - 70 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

MILTON RIPPON)
182 Market Street)
Paterson, N. J.,)

Holder of Plenary Retail Consumption License C-374 for the fiscal year 1942-43, and transferred during said year to)

JERRY'S COCKTAIL LOUNGE, INC.,)
for the same premises, and renewed for the present fiscal year by said Jerry's Cocktail Lounge, Inc., now holding Plenary Retail Consumption License C-355 issued by the Board of Alcoholic Beverage Control of the City of Paterson.)

CONCLUSIONS

AND ORDER

Wendell W. Furrey, Esq., Attorney for Defendant-Licensee.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to charges alleging, in substance, that (1) in his 1942-43 application he falsely concealed the interest of Frederic P. W. Seyfarth (also known as Fred Mueller), Edith Seyfarth and Otto Seyfarth in the license and business conducted

thereunder, in violation of R. S. 33:1-25; and (2) permitted the said Frederic P. W. Seyfarth, Edith Seyfarth and Otto Seyfarth to exercise the rights and privileges of his license, in violation of R. S. 33:1-52.

In January 1942 the defendant, Milton Rippon, a bartender, agreed with Frederic P. W. Seyfarth, a building contractor who is a German national, that they would engage in the liquor business. Their agreement was that Seyfarth would provide the necessary capital and Rippon would furnish his experience. They were to share equally in the profits of the enterprise. Seyfarth arranged to purchase the license in question and the tavern operated thereunder, which was located on VanHouten Street, Paterson. Shortly thereafter Seyfarth learned that he was disqualified from being a liquor licensee because of his alienage and the license was, therefore, taken in the name of Rippon individually. The partners decided that VanHouten Street was an undesirable location and, on February 11, 1942, the license was transferred to the premises at 182 Market Street, Paterson.

Subsequently Otto Seyfarth (brother of Frederic P. W. Seyfarth) acquired an interest in the licensed business. Otto Seyfarth was disqualified from being a retail liquor licensee because of his employment by a brewery. See R. S. 33:1-43.

On June 13, 1942 defendant executed an application for a renewal of the license for the fiscal year 1942-43 in which he denied under oath that any individual other than himself had any interest in the license or the business conducted thereunder. The local issuing authority granted the application and on July 1, 1942 the license was renewed.

On June 14, 1943 Frederic P. W. Seyfarth sold his interest in the licensed business to Otto Seyfarth and his wife, Edith. Jerry's Cocktail Lounge, Inc. was then incorporated. Fifty shares of its capital stock were issued to defendant, twenty-five to Otto Seyfarth and the remaining twenty-five to Edith Seyfarth. The tavern's fixtures, equipment and stock of merchandise were conveyed to the corporation.

On June 30, 1943 the license was transferred to the corporation and on July 1, 1943 renewed for the present fiscal year by the local issuing authority.

It appears that, since the organization of the corporation, Frederic P. W. Seyfarth has not been connected in any capacity with the licensed business. It also appears that Otto Seyfarth left the employ of the brewery at the time of the organization of the corporation and since then has been engaged solely in conducting the licensed business.

While the illegal situation existing at the time of the Department's investigation has apparently been corrected, a penalty must be imposed, as this correction does not excuse the violation of the law. Ordinarily I would suspend the license for sixty days, which is the usual penalty for fraudulently concealing the interest of disqualified non-citizens. Re Schamburg, Bulletin 540, Item 4; Re Rodeo, Inc., Bulletin 546, Item 7; Re Raich & Paulsen, Bulletin 551, Item 9; Re Gerhardt, Bulletin 558, Item 11; Re DiAnna, Bulletin 565, Item 12. However, in this case, the interest of Otto Seyfarth, who was disqualified because of his brewery employment, was also fraudulently concealed, and an additional penalty for this violation must be imposed. In view of all the circumstances, I shall suspend the license for seventy days.

Accordingly, it is, on this 29th day of December, 1943,

ORDERED, that Plenary Retail Consumption License C-355, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Jerry's Cocktail Lounge, Inc. for premises 182 Market Street, Paterson, be and the same is hereby suspended for seventy (70) days, commencing at 3:00 A.M. January 3, 1944 and terminating at 3:00 A.M. March 13, 1944.

ALFRED E. DRISCOLL
Commissioner.

10. AMERICAN DISTILLING COMPANY - HEREIN OF THE PROCEDURE TO BE FOLLOWED BY NEW JERSEY STOCKHOLDERS WITH RESPECT TO THE DISTRIBUTION AND/OR SALE OF WHISKEY RECEIVED BY THEM.

December 31, 1943

NOTICE

The American Distilling Company has advised this office that it has notified all stockholders of the corporation that they may purchase, from December 24, 1943 to and including February 29, 1944, their pro rata interest in 237,500 barrels of the company's inventory of rye and bourbon whiskey amounting to sixteen (16) cases per share; and that each stockholder of record at the close of business on February 29, 1944 will be given an opportunity to purchase, within twenty days thereafter, two (2) cases of bonded whiskey per share.

As a result, many inquiries have been made to this Department by stockholders residing in New Jersey who contemplate exercising the above mentioned option to purchase the whiskey in question either for their personal use or for the purpose of reselling it within this State.

At the outset, I wish to point out that no retail liquor licensee or any person interested directly or indirectly in the retailing of alcoholic beverages in this State may hold stock in any distillery within or without this State. Hence, New Jersey retail licensees or persons interested directly or indirectly in the retailing of liquor in this State may not purchase or hold stock in above distillery. To do so would be a violation of the Law (R.S.33:1-43) and cause for revocation or suspension of license.

There is no objection, however, to the holder of a Rectifier and Blender or a Plenary Wholesale License purchasing stock of the above mentioned distillery and exercising the options to purchase the whiskey pursuant thereto. Rectifiers and blenders, of course, must, before selling the whiskey, first subject it to some process such as blending or bottling in order to make it their product. On the other hand, plenary wholesale licensees (1) may purchase the whiskey in glass for the purpose of resale in the original containers, or (2) may purchase warehouse receipts covering the bulk whiskey for the purpose of having it subsequently bottled for resale.

Shareholders in this State who merely wish to obtain the whiskey for their personal use must file application with this Department and secure a Special Permit at a cost of \$5.00 for the importation of the whiskey to their New Jersey residence and must pay State taxes thereon at the rate of \$1.00 per gallon. In the event that the whiskey is delivered in separate shipments over a period of time, a separate Special Permit must be obtained for each shipment.

Each case will bear a serial number stamped thereon. All recipients of permits to import the whiskey for their personal use will be required to report the serial case numbers to this Department within forty-eight (48) hours after delivery of the whiskey to their homes.

With respect to obtaining of the whiskey by a shareholder in this State for the purpose of resale, the Commissioner will entertain an application for a Special Permit to consummate such sale of the whiskey to any New Jersey licensee who is permitted to handle the product, viz., licensed rectifiers, wholesalers or retailers. Application for such permit may be made by the shareholder who is selling the whiskey or by the licensee who desires to purchase it. The fee for the permit in either instance will be at the rate of 50¢ per case with a \$5.00 minimum. In addition, before a permit will be issued, State taxes at the rate of \$1.00 per gallon must be paid on the alcoholic beverages to be sold.

In connection with the issuance of the above permits to consummate sales of whiskey by shareholders to licensees, ceiling prices fixed by the Office of Price Administration must be complied with. It should be further noted that licensees who purchase whiskey pursuant to the aforesaid permits may not store whiskey so purchased except on their licensed premises or in a licensed public warehouse.

Application forms and the procedure for obtaining both the Special Permit to import the liquor for personal use and the Special Permit to resell the whiskey to a New Jersey licensee are available at this office upon request.

Warning is hereby given that this Department will be furnished with the names and addresses of all shareholders in New Jersey who may exercise options to purchase whiskey pursuant to the above plan. Anyone who fails to comply with the requirements of this Department as herein set forth will be prosecuted to the full extent of the law.

Alfred E. Buswell
Commissioner.