

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

BULLETIN 484

NOVEMBER 17, 1941.

1. APPELLATE DECISIONS - BERKOWITZ v. TRENTON.

APPLICATION DENIED BECAUSE OF CONVICTION OF CRIME INVOLVING MORAL TURPITUDE -- DENIAL AFFIRMED.

MORAL TURPITUDE - PARTICIPATION IN OPERATION OF ILLICIT STILL SINCE REPEAL INVOLVES MORAL TURPITUDE.

ISADORE BERKOWITZ,)	
)	
Appellant,)	
)	ON APPEAL
-vs-)	CONCLUSIONS AND ORDER
)	
BOARD OF COMMISSIONERS OF THE)	
CITY OF TRENTON,)	
)	
Respondent)	
-----)	

Seymour D. Kaplan, Esq. and Romulus P. Rimo, Esq.,
Attorneys for Appellant.
John A. Brieger, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the action of respondent, on August 14, 1941, whereby an application to renew his plenary retail consumption license for the current fiscal year at 117 Sherman Avenue, was denied.

The answer admits that respondent denied said application because appellant had been "convicted on or about January 6, 1941 in the United States District Court of conspiracy to violate the Internal Revenue Laws" and "the conviction *** involved moral turpitude."

At the hearing herein appellant admitted that, on January 6, 1941, he pleaded guilty to an indictment charging him with conspiracy to violate the Internal Revenue Laws. This case arose from the operation, in the year 1936, of a still in Schuylkill County, Pennsylvania. However, no indictments were found in that case until September 1939.

In the matter of Eligibility for Employment, Case No. 267, Bulletin 313, Item 1, somewhat similar facts were before the Commissioner. In his opinion in that case, the Commissioner stated:

"Whether *** activity in illicit liquor since Repeal constitutes moral turpitude is admittedly debatable."

While there may be some doubt as to whether or not every conviction following activity in illicit liquor involves moral turpitude, it is perfectly clear that an issuing authority may, after an examination of the facts in each instance, so conclude.

In this case appellant admits that, in 1936, he rented the property where the still was found, knowing that the person for whom he acted intended to operate a still thereon. This fact is sufficient to sustain respondent's conclusion that the crime in question involved moral turpitude.

Appellant argues that a different result should be reached herein because, on October 16, 1938, in Re Removal Case No. 41, Bulletin 273, Item 11, my predecessor lifted his disqualification because of other convictions and because, since said date, appellant has not violated the law. At the time of said ruling, appellant had not been indicted, arrested or convicted on the still charges and the result reached therein was warranted by the facts then presented. Further, the witnesses in the removal case before Commissioner Burnett all testified that the appellant had been in no trouble since 1924. Apparently they were wrong! That ruling, however, did not and naturally could not consider the effect of his conviction in the early part of the present year. Since I agree that the subsequent conviction involved moral turpitude, it follows that appellant is not eligible to hold a license and the action of respondent was entirely proper.

The action of respondent is affirmed.

Accordingly, it is, on this 8th day of November, 1941,

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

ALFRED E. DRISCOLL,
Commissioner.

2. APPELLATE DECISIONS - MARTIN v. CLIFTON AND ROWE.

TRANSFER OF LICENSE APPEALED ALLEGING CONSENT TO TRANSFER OBTAINED BY FRAUD AND MISREPRESENTATION - FRAUD NOT SHOWN - TRANSFER AFFIRMED.

CLARA MARTIN,)	
)	
Appellant,)	
)	
-vs-)	ON APPEAL
)	CONCLUSIONS AND ORDER
MUNICIPAL COUNCIL OF THE CITY)	
OF CLIFTON AND JOSEPH ROWE,)	
)	
Respondents.)	

Irving S. Zacharewitz, Esq., Attorney for Appellant.
Aaron Heller, Esq., Attorney for Respondent, Joseph Rowe.
No appearance for Respondent, Municipal Council.

BY THE COMMISSIONER:

This is an appeal from the action of the Municipal Council of the City of Clifton in granting a person to person transfer of License C-99 for premises at 676 Main Avenue, Clifton. Joseph Rowe, to whom the license was transferred, is joined as a respondent.

The license in question had been renewed for the current fiscal year in the names of Clara Martin, appellant herein, and her partner Joseph Kuhn. After all statutory requirements concerning the transfer of the license had been complied with, respondent

Municipal Council, on August 5, 1941, transferred the license without objection to respondent Joseph Rowe. Thereafter, appellant filed this appeal contending that the transfer should be set aside because her consent to said transfer had been obtained by fraud and misrepresentation.

The evidence shows that on July 8, 1941 appellant was injured in an automobile accident and sustained a fracture of the pelvis bone, lacerations and contusions; that on July 11th, at the hospital where she was confined, she and Joseph Kuhn signed and acknowledged a bill of sale conveying all the goods and chattels in the licensed premises to Joseph Rowe; that at the same time she signed and acknowledged a general release to Joseph Kuhn and she and Kuhn signed the consent to the transfer of the license to Joseph Rowe. It is admitted that Rowe was not at the hospital when these papers were executed.

At the hearing herein appellant testified that, because of her physical condition, she did not know the nature or character of the paper she signed and alleged that Joseph Kuhn had misinformed her as to the effect of these documents. However, appellant's doctor testified that on July 11th her mental and physical condition was good and the Notary Public who took the acknowledgment testified that the nature and contents of the papers had been explained to appellant before these papers were signed and acknowledged by her. Kuhn, who is in the Army, did not testify.

I conclude from the evidence that appellant knew the contents of and voluntarily executed the documents signed at the hospital and that respondent Municipal Council, in reliance upon the consent which was valid upon its face, thereafter transferred the license in good faith. Under these circumstances, respondent Municipal Council clearly had jurisdiction to transfer the license. Re Atlantic Highlands, Bulletin 129, Item 5; Re Mancini v. West New York, Bulletin 253, Item 10.

It does not appear from the evidence that respondent Rowe made any misrepresentations to appellant at the time the documents were signed and if any such misrepresentations were made to appellant by her partner Kuhn at that time it would seem that this is a matter between them which should be settled in a court of competent jurisdiction.

The evidence herein does not warrant a reversal, and hence the action of respondent Municipal Council in transferring the license to Joseph Rowe is affirmed.

Accordingly, it is, on this 8th day of November, 1941,

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

ALFRED E. DRISCOLL,
Commissioner.

3. ACTIVITY REPORT FOR OCTOBER, 1941.

To: Alfred E. Driscoll, Commissioner

ARRESTS: Licensees - - - - - 2 Bootleggers - - - - - 32
 Total number of persons arrested - - - - - 34

SEIZURES: Stills - 1 to 50 gallons daily capacity - - - - - 0
 50 gallons and more daily capacity - - - - - 2
 Total number of stills seized - - - - - 2
 Mash - gallons - - - - - 15,929
 Motor vehicles - Trucks - - - - - 4
 Passenger cars - - - - - 6
 Total number of motor vehicles seized - - - - - 10
 Beverage alcohol - gallons - - - - - 212.49
 Brewed malt alcoholic beverages (beer, ale,
 etc.) - gallons 36.63
 Wine - gallons - - - - - 3,105.97
 Distilled alcoholic beverages (whiskey, brandy,
 etc.) - gallons 98.44

RETAIL LICENSEES:

Number of premises in which were found:
 Illicit (bootleg) liquor - 9 "Fronts" (concealed ownership) - 2
 Gambling devices - - - - - 12 Improper beer tap markers - - - 2
 Prohibited signs - - - - - 17 Stock disposal permits necessary 20
 Unqualified employees - - 89 Other types of violations - - - 13
 Total number of premises where violations were found - - 154
 Total number of premises inspected - - - - - 1,772
 Total number of unqualified employees found - - - - - 122
 Total number of bottles gauged - - - - - 14,916

STATE LICENSEES:

Premises inspected - - - - - 120
 License applications investigated - - - - - 12

COMPLAINTS:

Investigated, reviewed and closed - - - - - 242
 Investigation assigned, not yet completed - - - - - 232

LABORATORY:

Analyses made - - - - - 138
 "Shake-up" cases (alcohol, water and artificial
 coloring) - - - - - 25
 Liquor found to be not genuine as labeled - - - - - 7

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made - - - - - 17
 Persons fingerprinted for non-criminal purposes - - - 80
 Identification contacts with other enforcement agencies - 210
 Motor vehicle identifications via N. J. State
 Police Teletype - - 65

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities - - - - - 22
 Cases instituted at Department - - - - - 27

HEARINGS HELD AT DEPARTMENT:

Appeals - - - - - 8 Eligibility - - - 4
 Disciplinary proceedings - 8 Seizures - - - 7
 Total number of hearings held - - - - - 27

PERMITS ISSUED:

Unqualified employees - - - - - 466
 Solicitors - - - - - 103
 Social affairs - - - - - 346
 Home manufacture of wine - - - - - 1,528
 Disposal of alcoholic beverages - - - - - 78
 Miscellaneous permits - - - - - 147
 Total number of permits issued - - - - - 2,668

Respectfully submitted,
 S. J. MacIntosh,
 Inspector.

4. MANUFACTURERS, WHOLESALERS, SOLICITORS - NOTICE REGARDING PENALTIES FOR UNLICENSED SOLICITATION.

November 7, 1941

TO ALL STATE LICENSEES:

The Alcoholic Beverage Law (R. S. 33:1-67) prohibits all individuals (except licensees and employees of retail licensees in connection with the licensed business) from selling any alcoholic beverages or soliciting any order for the purchase or sale of any alcoholic beverage in New Jersey, without first obtaining a Solicitor's Permit.

Any violation of above cited section constitutes a misdemeanor and subjects the offender to punishment by fine and imprisonment.

Further, pursuant to State Regulations No. 12, State licensees who employ solicitors without permit subject their license to suspension or revocation.

Effective immediately, any State licensee who employs a solicitor who has not obtained a proper solicitor's permit, will be subject to proceedings for the suspension or revocation of his license or, in the alternative, may be required to obtain a special permit to validate the unauthorized employment. Determination as to whether or not opportunity will be given to obtain a validating permit in lieu of the institution of such proceedings will depend upon the facts and circumstances in each case. The fee for such validating permit for first offense will be \$25.00. Repeated and flagrant violations will result in the suspension or revocation of license.

There will be no exceptions.

ALFRED E. DRISCOLL, Commissioner.

5. APPELLATE DECISIONS - MILES v. PISCATAWAY.

TRANSFER OF LICENSE DENIED IN COMPLIANCE WITH LOCAL ZONING ORDINANCE - DENIAL AFFIRMED.

JOSEPH MILES,)	
Appellant,)	
-vs-)	ON APPEAL
)	CONCLUSIONS AND ORDER
TOWNSHIP COMMITTEE OF THE)	
TOWNSHIP OF PISCATAWAY,)	
Respondent.)	
-----))	

Edward J. Santoro, Esq., Attorney for Appellant.
Maurice M. Bernstein, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from denial of transfer of his plenary retail consumption license from the corner of Walnut and Fourth Streets to 1760 South Avenue, Piscataway Township.

The transfer was denied because, among other reasons, it was alleged that the use of the premises as a tavern would be a direct violation of the local zoning ordinance.

By Zoning Ordinance of the Township, adopted November 16, 1937, and amended December 7, 1937, the premises to which transfer is sought are located in a class "B" residence district. Section 6 of said ordinance provides that a building in a "B" residence district may be used for any of the following purposes and for no other:

- (a) Single - Family detached dwelling
- (b) Club, Fraternity House or Lodge
- (c) Educational, Religious or Philanthropic use
- (d) Hospital, Sanitarium or Telephone Exchange
- (e) Farm, Nursery or Greenhouse

The proposed transfer would be in direct disregard of the restrictions set forth in the ordinance unless, as appellant contends, said premises come within the exception in zoning law whereby a non-conforming use may continue after adoption of a zoning ordinance.

The evidence shows that the building at 1760 South Avenue is a small one-story structure; that, many years ago, it was used as a restaurant; that, thereafter, it was used for some time as a "gambling joint" until raided in May 1936; that, since the raid, it has been vacant except for a short period during 1937 or 1938 when it was used by some boys as a social club. It has been vacant for at least three years last past. It has never been licensed for the sale of alcoholic beverages.

In view of the fact that these premises were apparently vacant when the zoning ordinance was adopted, there is a serious question as to whether this property may be put to any non-conforming use. That question need not be decided herein. In any event, its exemption from the ordinance is limited to its non-conforming character at the time that ordinance was adopted. The privilege of selling alcoholic beverages would constitute a new and independent use. Speake v. Closter (decided by the Supreme Court of this State on April 4, 1934, but not reported); Talbot v. Keppler, Bulletin 117, Item 1; Corradi v. Closter, Bulletin 219, Item 3; Marinaccio v. Ocean, Bulletin 264, Item 11; Murchio v. Wayne, Bulletin 379, Item 7. I conclude that the transfer sought would be contrary to the terms of the local zoning ordinance.

It is unnecessary to consider the numerous other reasons for denial alleged by respondent except to point out that, aside from the question of zoning, the transfer is sought from a well-populated section of the municipality to a sparsely-populated section thereof and to a section which is more difficult to patrol. Two of the Township Committeemen testified that they were influenced by consideration of these facts in voting to deny.

It is fundamental that the right of transfer does not inhere in a license. Under the facts of this case, appellant has not sustained the burden of showing that the action of respondent in refusing to transfer the license was arbitrary or unreasonable. The action of respondent is, therefore, affirmed.

Accordingly, it is, on this 12th day of November, 1941,

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

ALFRED E. DRISCOLL,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - FRONTS - FALSE STATEMENTS IN LICENSE APPLICATIONS CONCEALING THE INTEREST OF ANOTHER - AIDING AND ABETTING A NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSES - FULL DISCLOSURE - BOTH LICENSES SURRENDERED - PRESENT LICENSE OF FORMER FRONT SUSPENDED FOR 10 DAYS - FORMER LICENSE OF CORPORATE FRONT REVOKED.

DISCIPLINARY PROCEEDINGS - EXERCISING THE RIGHTS AND PRIVILEGES OF LICENSES ISSUED TO OTHERS - APPLICATION FOR EMPLOYMENT PERMIT DENIED.

In the Matter of Disciplinary Proceedings against)

ANTHONY BLAKE,)
T/a MILFORD HOUSE,)
Water Street,)
Milford, N. J.,)

Holder of Plenary Retail Consumption License C-2 for the fiscal year expiring June 30, 1941, and now holder of Plenary Retail Consumption License C-3 for the current fiscal year, issued by the Mayor and Common Council of the Borough of Milford,)

-and-

ROLL INN, INC.,)
North Side of Route 28, about)
1 1/4 miles West of North Branch,)
Branchburg Township, N. J.,)

CONCLUSIONS AND ORDERS

Holder of Plenary Retail Consumption License C-6 for the fiscal year expiring June 30, 1941, issued by the Township Committee of the Township of Branchburg,)

-and-

GEORGE HAHON,)
N. J. Route 28,)
North Branch, N. J.,)

Holder of Employment Permit No. 3380, expiring June 30, 1941, issued by the State Commissioner of Alcoholic Beverage Control.)

Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

Frank Lott, Esq., Attorney for Anthony Blake and George Hahon.
Leon Gerofsky, Esq., Attorney for Della Hahon.

BY THE COMMISSIONER:

These cases are interrelated and were, therefore, heard together and are now being decided together.

Anthony Blake was charged with (1) misrepresenting in his application for license filed November 6, 1939 that no other person had any interest in the license, whereas in truth George Hahon did have such interest, and (2) that from November 9, 1939 to April 23, 1940 he aided and abetted George Hahon, a non-licensee, to exercise the privileges of his license.

Roll Inn, Inc. was charged with (1) misrepresenting in its application for license issued for the fiscal year 1940-41 that no other person had any interest in its license, whereas in truth George Hahon did have such interest, and (2) that from May 11, 1940 to May 6, 1941 it aided and abetted George Hahon, a non-licensee, to exercise the privileges of its license.

George Hahon was charged with (1) exercising the privileges of the license issued to Anthony Blake from November 9, 1939 to April 23, 1940, and (2) exercising the privileges of the license issued to Roll Inn, Inc. from May 11, 1940 to May 6, 1941.

Blake and Hahon, although pleading not guilty, nevertheless made a full and frank disclosure of all the facts, both in written statements given to Departmental investigators and also when testifying at the hearing. The corporate defendant was not represented.

From those written statements and the oral testimony, it appears that George Hahon, a resident of this State only since May 1939, and therefore ineligible to become a licensee (R. S. 33:1-25) procured Anthony Blake to obtain a liquor license on November 6, 1939 on his behalf. It is admitted that from that date until April 23, 1940, when the license was surrendered, Blake held the license merely as a "front" for Hahon. Apparently, the only reason that Blake pleaded not guilty was because of his mistaken belief that since he intended at some future date to become a partner with Hahon in the business, the misrepresentation did not amount to a deliberate fraud against the issuing authority. The fact remains, however, that during the entire existence of the license, Blake had no interest whatsoever in the business conducted thereunder, and that the license was surrendered only after investigation disclosed the true situation.

Thereafter, Hahon caused the Roll Inn, Inc. to be formed in which he, his wife and another relative each were purported to own 10% of the stock, and two other persons each 35% of the stock. The evidence shows that no stock was ever in fact issued; that no one other than Hahon invested any money in the business; that Hahon paid the license fee from his personal funds; that the two major stockholders permitted the use of their names merely as a "favor" to Hahon. This license was surrendered on March 6, 1941 after this Department discovered that the only person interested therein was Hahon.

I find Anthony Blake, Roll Inn, Inc. and George Hahon guilty as charged.

As to penalty against Anthony Blake: A liquor license was issued to Blake in the Borough of Milford, New Jersey, on May 15, 1941 and this license was renewed by him for the present fiscal period. Although this proceeding was instituted against the license held by him for the fiscal period ending June 30, 1941, it does not abate but remains fully effective against his present license. State Regulations No. 15. Nor does the fact that the offense occurred under a prior license held for other premises bar the imposition of a penalty against Blake's present license, since R. S. 33:1-31(a) provides that any license may be suspended for a violation of any of the provisions of the Alcoholic Beverage Law, and State Regulations No. 15 subjects any license to suspension for proper cause notwithstanding that such cause arose during the term of a prior license held by the licensee. Cf. Re Morley, Bulletin 427, Item 3.

Blake's license will be suspended for ten days, which is the usual penalty for a "front" to evade the statutory residence requirement and where, as here, there has been full and frank admission of the facts. Re Byer, Bulletin 477, Item 4, and cases therein cited.

As to penalty against Roll Inn, Inc.: Neither the surrender nor expiration of the license bars proceedings to revoke it. R. S. 33:1-31; State Regulations No. 15. Although the corporation is apparently now dormant and its license has expired, I shall revoke such license since it will at least prevent that corporation from obtaining another liquor license for the period of two years from the date hereof. R. S. 33:1-31.

As to penalty against George Hahon: When this proceeding was begun, Hahon held Employment Permit No. 3380 (obtained because of his lack of five years' residence in this State) expiring June 30, 1941. He has now pending before me an application for similar permit for the present fiscal year. That application is hereby denied for the reason that one who, not once but on two separate occasions, deliberately employs a subterfuge to conceal his illegal interest in the liquor business is, in my opinion, not a proper person to be associated with the alcoholic beverage industry.

In addition to the foregoing, George Hahon and Della Hahon, his wife, as owners of the property containing the licensed premises, were served with notice, pursuant to R. S. 33:1-31, requiring them to show cause why, in the event that the license of Roll Inn, Inc. was revoked, the licensed premises should not be declared ineligible to become the subject of any further license for a period of two years. It appears from the evidence that the property was originally purchased by George Hahon and the deed thereto taken in his name and also that of his wife. On March 18, 1941 articles of separation were entered into between them and they have been living separate and apart ever since then. In accordance with the separation agreement, title to the property in question was, on March 18, 1941, vested solely in Della Hahon.

So far as she, the present owner of the property, is concerned, the evidence falls short of establishing any complicity on her part in connection with either of the unlawful "fronts." It is clear that George Hahon was the moving and guiding spirit in both cases. The only testimony of any substance against her is that she was assigned a 10% interest in Roll Inn, Inc. by her husband. However, the proofs show that none of the stock of this corporation was ever issued and she testified, without any contradiction in the record, that she was never aware that her husband intended her to have any interest in that corporation. Under the circumstances, no order of disqualification against the property in question will be entered.

Accordingly, it is, on this 10th day of November, 1941,

ORDERED, that Plenary Retail Consumption License C-5, issued by the Mayor and Common Council of the Borough of Milford to Anthony Blake for premises on Water Street, Milford, N. J., for the current fiscal year, be and the same is hereby suspended for a period of ten (10) days, effective November 17, 1941, at 2:00 A.M.; and it is further

ORDERED, that Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Branchburg to Roll Inn, Inc. for premises North Side of Route 28, about 1½ miles West of North Branch, Branchburg Township, N. J., for the fiscal year 1940-41, be and the same is hereby revoked.

ALFRED E. DRISCOLL,
Commissioner.

7. APPELLATE DECISIONS - MOOSE v. WASHINGTON.

LIMITATION OF NUMBER OF LICENSES - UNREASONABLE AS APPLIED TO CLUB LICENSES - DENIAL REVERSED.

WASHINGTON LODGE NO. 512,)
LOYAL ORDER OF MOOSE,)
Appellant,)
-vs-)

ON APPEAL
CONCLUSIONS AND ORDER

COMMON COUNCIL OF THE BOROUGH)
OF WASHINGTON (WARREN COUNTY),)
Respondent)

Robert B. Woodward, Esq., Attorney for Appellant.
No appearance on behalf of Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of a club license to appellant for club quarters at 11 West Church Street, Borough of Washington.

It appears from the testimony of Borough Clerk Gardner that, at a meeting held on October 23, 1941, respondent denied the license because an ordinance now in effect allows only two club licenses and club licenses have been issued to the Elks and Washington Maennerchor.

There is no question as to the qualification of appellant. It has complied with the statutory requirements concerning an application for license.

On May 13, 1941, in a previous appeal between the same parties, the action of respondent in denying a club license for other premises was affirmed solely because of the location of the premises then sought to be licensed. Washington Lodge v. Washington, Bulletin 460, Item 2. In the present appeal, no objection has been raised as to the suitability of the premises now occupied by appellant.

This Department has consistently ruled that, where a local quota upon club licenses is drawn into issue on appeal, the burden of proof is fairly upon the municipality to justify such quota. John Adams Post v. Wildwood, Bulletin 456, Item 9, and cases cited therein.

In the present case, no reason appears why the club licenses should be limited to two or why, if the Elks and Maennerchor may have a club license, the Moose should not likewise be entitled to such a license.

I conclude that the ordinance operates unreasonably as to appellant, and hence does not justify the denial. Under the facts, respondent's action must be reversed.

Accordingly, it is, on this 12th day of November, 1941,

ORDERED, that the action of respondent in denying the club license in question be and the same is hereby reversed, and that respondent issue a club license to Washington Lodge No. 512, Loyal Order of Moose, forthwith as applied for.

ALFRED E. DRISCOLL,
Commissioner.

8. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING THE INTEREST OF ANOTHER - AIDING AND ABETTING A NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - ILLICIT LIQUOR - ADMISSION OF REFILLS FOR THE PURPOSE OF SUBSTITUTING CHEAPER WHISKEY - TWO PREVIOUS ILLICIT LIQUOR WARNINGS AND ONE PREVIOUS FAIR TRADE CONVICTION - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against

MARY A. SIVO, 54-56 Butler Street, Trenton, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-269 for the 1940-41 fiscal year (during which the present proceedings were instituted), and now holder of Plenary Retail Consumption License C-269 for the current 1941-42 fiscal year, both issued by the Board of Commissioners of the City of Trenton.

Mario H. Volpe, Esq., Attorney for Defendant-Licensee. Charles Basile, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant, holder of a plenary retail consumption license for a tavern in Trenton, is here charged with violating the Alcoholic Beverage Law by:

- (1) Falsely denying in her license-application, dated June 13, 1940, that anyone other than herself had any interest in the tavern when actually Andrew Sivo (her husband) had such an interest. R. S. 33:1-25.
(2) Permitting him to exercise the rights and privileges of the license. R. S. 33:1-26, 52.
(3) Possessing illicit alcoholic beverages at the tavern. R. S. 33:1-50.
(4) Illegally bottling alcoholic beverages for the purpose of sale. R. S. 33:1-78.

The defendant pleads not guilty to the first two charges, which allege, in essence, that she fraudulently obtained and holds her license as a "front" for her husband Andrew Sivo.

On this "front" issue, the Department's case chiefly rests upon the following signed statement which the defendant gave to agents of this Department during the course of their investigation in the matter:

"The reason this license is in my name is because my husband Andrew Sivo was in some trouble in about 1913 (sic) with the law and as a result of this he served 10 months of a 1 year sentence at the Mercer County Workhouse, and after the Repeal of Prohibition he secured a liquor license in his own name, but some one

brought his record to the attention of the Commissioners of Trenton so he then had the license transferred to Luigi Landolfi. Later he secured a full pardon and decided to take the tavern back himself, but as he had some judgments on record against him, he put the license in my name."

In light of the other evidence in the case, and the records of this Department, the full facts appear to be:

Originally, in 1934, Sivo held the license for this tavern. When the Trenton issuing authority learned that Sivo had been convicted in 1915 of a serious crime (which he apparently had not disclosed in his application), Sivo on September 11, 1934 surrendered his license. However, simultaneously, the Trenton issuing authority granted a new license for the tavern to Luigi Landolfi, who remained the licensee for several years. During this period when Landolfi was the licensee, Sivo was apparently found working at the tavern and, in February 1936, the Trenton issuing authority suspended the license for one day on the theory that Sivo was a disqualified employee and directed that Sivo not be allowed on the premises until he had obtained a full pardon for his conviction. In November of that year Sivo obtained such a pardon, thus removing any disqualification arising from the conviction (see Re Case No. 117, Bulletin 398, Item 2, and cases there cited). Some months later, viz., in May 1938, Sivo had Landolfi's license transferred to his wife, the present defendant, apparently for the purpose mentioned in her statement. She has ever since been the licensee, with Sivo purportedly being only an employee.

Now, there is strong suspicion that Sivo actually remained the owner of this tavern throughout the entire period from 1934 onward, with even Landolfi being merely a "front" for him.

However, be this suspicion as it may, it is nevertheless clear from the defendant's signed statement that she has, as here charged, been holding her license as a deliberate "front" for her husband. Although she now claims that she signed this statement when "excited" and that in actuality she bought the tavern from Landolfi and is its real and sole owner, nevertheless, in light of the history of this tavern, the plain admission in the signed statement and the defendant's telltale ignorance when asked at the hearing for details of the alleged transaction whereby she became owner, I can give no credence to her present claim and must accept the statement as representing the true story.

I am thus convinced that Sivo is the actual, although undisclosed, proprietor of the tavern and has, with the defendant's connivance, been exercising the rights and privileges of her license.

Hence I find the defendant guilty of charges (1) and (2).

As for charges (3) and (4), viz., possessing illicit liquor and bottling the same, the defendant admits guilt by her plea of nolo contendere thereto.

The facts as to these charges are clear. On November 26, 1940, investigators of this Department, while testing various open liquor bottles at the tavern, found two which appeared to test off - viz., a quart bottle labeled "Wilson 'That's All' Blended Whiskey," two-thirds full, and another quart bottle labeled "Calvert Special Blended Whiskey," one-quarter full. When confronted with this fact, Andrew Sivo, then tending bar, admitted in a signed statement to the investigators that:

"As business has been bad and I have some customers who will only pay (10¢) ten cents for a drink while others will pay (15¢), I took an empty Wilson Whiskey bottle and an empty Calvert's Special Whiskey bottle and filled both of them with a cheap Straight Rye Whiskey called 'Old American.' Then when my 10¢ customers came in and asked for Wilson or Calvert's whiskey I gave them the bottles containing the 'Old American' but labeled Wilson or Calvert's. When my 15¢ customers came in I gave them the real Wilson or Calvert's whiskey."

On two other occasions, not long before the one in question, there was apparently trouble with the liquor at this tavern. In March of 1940, Federal agents found a bottle of liquor there which they charged was not genuine, and the licensee made a compromise settlement. Later, in April of 1940, investigators of this Department discovered a second bottle containing liquor appearing not to be genuine. In each instance the licensee was warned that a repetition would carry serious consequences and expressly put to the test of future good behavior.

As to penalty: In the first place, I have before me a deliberate and purposeful "front," and an attempt at the hearing to further such "front" by falsely denying its existence. On these facts alone (and even disregarding the prior events leading up to the "front"), a substantial penalty would clearly be in order. Cf. Re Boreth, Bulletin 442, Item 7 (where a wife falsely denied she was a "front" for her husband).

In addition, there is here the further misconduct of deliberate "refills" of liquor at the tavern - a practice which is not only a pernicious fraud upon the consuming public but one which strikes at the very roots of liquor control since there can never be full assurance that the "refills" may not actually be "bootleg" liquor. See Re 12 East Park Street Tavern, Inc., Bulletin 481, Item 9. Such a reprehensible practice, which calls on its own for substantial penalty, is here heavily aggravated by the fact that Sivo persisted in carrying it on in callous disregard of the two danger warnings by this Department.

In weighing proper penalty for the present offenses, I further note, to complete the record, that a Fair Trade violation occurred at this tavern in December 1938, about half a year after the license was put in the defendant's name (such license being suspended for ten days less five for guilty plea). See Re Sivo, Bulletin 293, Item 12; Bulletin 362, Item 1.

It is clear that revocation is the only proper penalty in the instant case. Persons with such crass regard for obedience to the liquor laws and decent dealing with the public must be eliminated from the liquor industry. Anything less would be contrary to the public interest.

The present proceedings, although instituted during the last licensing year, nevertheless remain fully effective against the defendant's renewal license for the current fiscal year. See State Regulations No. 15.

Accordingly, it is, on this 12th day of November, 1941,

ORDERED, that plenary retail consumption license issued by the Board of Commissioners of the City of Trenton to Mary A. Sivo, for the current fiscal year for premises at 54-56 Butler Street, Trenton, be and it hereby is revoked, effective immediately.

ALFRED E. DRISCOLL,
Commissioner.

9. MORAL TURPITUDE - ATTEMPTED FORGERY IN KNOWINGLY ENDEAVORING TO PASS A FORGED CHECK INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - EMPLOYMENT ON LICENSED PREMISES DESPITE KNOWLEDGE OF DISQUALIFICATION BECAUSE OF CONVICTION AND NON-RESIDENCE - APPLICATION DENIED.

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. 172.)
-----)

BY THE COMMISSIONER:

In 1932 petitioner, on his plea of guilty, was convicted in New York State for "attempted forgery, second degree" in seeking to pass, with intent to defraud, a forged check in the sum of \$452.00. New York Penal Code, sec. 511, 512; Laws 1881, ch. 676. Sentenced to imprisonment for a term of from one to three years, he served a year and was then released on parole.

Knowingly passing or attempting to pass a forged check with intent to defraud is a crime which, by its very nature, ordinarily involves the element of moral turpitude. Cf. Re Case No. 71, Bulletin 199, Item 9 (knowingly possessing and attempting to pass counterfeit money); Re Case No. 243, Bulletin 292, Item 3 (forging checks); Re Case No. 319, Bulletin 398, Item 8 (knowingly possessing, with intent to sell, forged excursion tickets). I see nothing in the present case which frees petitioner's crime of that element. As to his claim that he was actually innocent of the crime, he may not here collaterally attack his own confessional plea or the merits of his conviction in criminal court. Re Case No. 162, Bulletin 477, Item 6, and cases there cited. Hence, petitioner is necessarily disqualified under the Alcoholic Beverage Law from working for a liquor licensee or holding a liquor license in New Jersey. R. S. 33:1-25, 26.

However, more than five years having elapsed since the conviction, petitioner now seeks, pursuant to R. S. 33:1-31.2, to have such disqualification removed.

Petitioner claims that, after his release from prison in 1933, he continued to live in New York City and worked there as a longshoreman for several years, finally quitting because of the unsteady day-to-day nature of the work, and remaining out of a job for some five or six months. He states that thereafter, in 1935, he commuted for several weeks to Newark to work at the "oyster and clam bar" of a tavern in that city; that he then obtained work as a regular bartender at another Newark tavern (being operated by a corporation of which his brother is the dominant character), moved into Newark, and has continued to reside and work as a bartender there.

Petitioner admits that he actually knew, ever since at least the early months of his employment as such bartender, that his conviction disqualified him from that work, and further, that his lack of requisite five years' residence in New Jersey was an additional disqualification unless he first obtained a special permit from this Department (R. S. 33:1-25, 26). He further concedes

that he never sought any such permit because he feared his conviction would then come to light; that only when investigators of this Department discovered the facts did he file the present petition for removal of his criminal disqualification (the five years' residence disqualification having expired in 1940).

Now, a person is not automatically entitled to a removal of criminal disqualification merely because he has not been actually convicted of any offense for the last five years. Whether there shall be a removal lies within the proper discretion of the State Commissioner. See K. S. 33:1-31.2; Re Case No. 178, Bulletin 478, Item 12; Re Case No. 164, Bulletin 481, Item 1; Re Case No. 166, Bulletin 481, Item 3.

Were this the case of a disqualified person working as bartender while ignorant of his disqualification, and, upon learning the truth, voluntarily coming forward to seek a removal, such relief might perhaps be in order. See Re Case No. 161, Bulletin 477, Item 11.

However, I have here a petitioner who deliberately worked as a bartender in this State since 1935 in full knowledge of his disqualification and in the apparent hope of never being discovered, and who now files a petition for removal only when actually caught.

In view of these facts, I can scarcely deem that petitioner has demonstrated such a habit of law-abiding conduct as to warrant the removal of his criminal disqualification. His actual conduct precludes the finding, requisite to any removal, that his restoration to eligibility in the liquor industry will not be contrary to the public interest.

Accordingly, the present petition is denied.

When thus denying removal in these cases, I do not wish to be understood as discouraging the bona fide rehabilitation of such petitioners. Although I am keenly aware of the sociological importance of providing them with decent and honest means of livelihood, nevertheless I do not think that the liquor industry, with its grave temptations and its dangers of social abuse, should be used as the field of endeavor for any such persons save those who have, judging by their actions as well as their words, given full and complete sign of having effected a bona fide rehabilitation for at least five years last past.

ALFRED E. DRISCOLL,
Commissioner.

Dated: November 12, 1941.

10. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGE BELOW FAIR TRADE MINIMUM - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against
 A & S LIQUOR STORE, INC.,
 479 Broadway,
 Bayonne, N. J.,
 Holder of Plenary Retail Distribution License D-5, issued by the Board of Commissioners of the City of Bayonne.

CONCLUSIONS AND ORDER

 A & S Liquor Store, Inc., by Albert Cohn, President.
 Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee has pleaded guilty to a charge of selling an alcoholic beverage below Fair Trade price, in violation of Rule 6 of State Regulations No. 50.

The Department file discloses that, on September 30, 1941, two investigators purchased a half-gallon bottle of Wilson "That's All" Whiskey for \$5.00 from Florence Cohn, Secretary-Treasurer of the licensee corporation. The minimum consumer price at which half-gallon bottles of this whiskey could be sold at the time was \$5.25. Bulletin 471.

The licensee offers no explanation for the violation and shows no mitigating circumstances. The licensee has no previous convictions of any kind. The license will, therefore, be suspended for ten days. Re Bernie Feldman's Liquor Store, Inc., Bulletin 482, Item 11.

By entering a guilty plea in advance of the date set for hearing, the licensee has saved the Department the time and expense of proving its case. Five days of the penalty will therefore be remitted.

Accordingly, it is, on this 17th day of November, 1941,

ORDERED, that Plenary Retail Distribution License D-5, heretofore issued to A & S Liquor Store, Inc. by the Board of Commissioners of the City of Bayonne, be and the same is hereby suspended for a period of five (5) days, effective November 24, 1941, at 3:00 A. M.

Alfred E. Duswell
 Commissioner.

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