

BULLETIN 928

MARCH 12, 1952.

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Dear Mr. Miller:

Thank you for your letter of the 10th.

I am sorry that I cannot

reply to you more quickly.

I am sure that you will

understand my position.

I am sure that you will

be satisfied with the

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STATE OF NEW JERSEY
 Department of Law and Public Safety
 DIVISION OF ALCOHOLIC BEVERAGE CONTROL
 1060 Broad Street Newark 2, N. J.

BULLETIN 928

MARCH 12, 1952.

1.

ACTIVITY REPORT FOR FEBRUARY 1952

ARRESTS:		
Total number of persons arrested - - - - -		25
Licensees and employees - - - - -	7	
Bootleggers - - - - -	17	
Personating an ABC officer - - - - -	1	
SEIZURES:		
Motor vehicles - cars - - - - -		1
Stills - 50 gallons or under - - - - -		1
Mash - gallons - - - - -		75.00
Distilled alcoholic beverages - gallons - - - - -		7.86
Wine - gallons - - - - -		1.39
Brewed malt alcoholic beverages - gallons - - - - -		24.35
RETAIL LICENSEES:		
Premises inspected - - - - -		692
Premises where alcoholic beverages were gauged - - - - -		998
Bottles gauged - - - - -		15,523
Premises where violations were found - - - - -		150
Violations found - - - - -		185
Type of violations found:		
Unqualified employees - - - - -	21	Other mercantile business - - - - - 3
Reg. #38 sign not posted - - - - -	5	Disposal permit necessary - - - - - 1
		Other violations - - - - - 155
STATE LICENSEES:		
Premises inspected - - - - -		20
License applications investigated - - - - -		12
COMPLAINTS:		
Complaints assigned for investigation - - - - -		418
Investigations completed - - - - -		389
Investigations pending - - - - -		176
LABORATORY:		
Analyses made - - - - -		125
Refills (from licensed premises) - bottles - - - - -		7
Bottles from unlicensed premises - - - - -		10
IDENTIFICATION BUREAU:		
Criminal fingerprint identifications made - - - - -		27
Persons fingerprinted for non-criminal purposes - - - - -		184
Identification contacts made with other enforcement agencies - - - - -		188
Motor vehicle identifications via N. J. State Police Teletype - - - - -		7
DISCIPLINARY PROCEEDINGS:		
Cases transmitted to municipalities - - - - -		18
Violations involved:		
Sale during prohibited hours - - - - -	10	Failure to afford view into premises during prohibited hours - - - - - 2
Sale to minors - - - - -	7	Permitting hostesses on premises - - - - - 1
Cases instituted at Division - - - - -		14
Violations involved:		
Permitting immoral activity on premises - - - - -	6	Failure to afford view into premises during prohibited hours - - - - - 1
Permitting slot machines on premises - - - - -	3	Employing female bartender - - - - - 1
Sale to minors - - - - -	3	Permitting gambling (cards) on premises - - - - - 1
Sale below minimum resale price - - - - -	2	Permitting prostitutes on premises - - - - - 1
Sale during prohibited hours - - - - -	2	Permitting lottery activity (fight pool) - - - - - 1
Permitting hostesses on premises - - - - -	2	Sale to non-members by special permittee - - - - - 1
Unqualified employee - - - - -	1	Sale to intoxicated persons - - - - - 1
Cases brought by municipalities on own initiative and reported to Division - - - - -		13
Violations involved:		
Sale to minors - - - - -	5	
Permitting bookmaking on premises - - - - -	1	
Permitting lottery activity (numbers) - - - - -	4	
Sale during prohibited hours - - - - -	2	
Permitting brawl on premises - - - - -	1	
HEARINGS HELD AT DIVISION:		
Total number of hearings held - - - - -		40
Appeals - - - - -	4	Tax revocation - - - - - 11
Disciplinary proceedings - - - - -	16	Applications for license - - - - - 1
Eligibility - - - - -	8	
PERMITS ISSUED:		
Total number of permits issued - - - - -		674
Employment - - - - -	126	Social affairs - - - - - 290
Solicitors - - - - -	72	Special wine - - - - - 6
Disposal of alcoholic beverages - - - - -	69	Miscellaneous - - - - - 111

Dated: March 3, 1952.

EDWARD J. DORTON
 Acting Director.

2. APPELLATE DECISIONS - CHRISTIAN v. PASSAIC.

ERNEST PAUL CHRISTIAN,)
Appellant,)

-vs-

BOARD OF COMMISSIONERS OF THE)
CITY OF PASSAIC,)
Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

Grossman & Kampelman, Esqs., by Joseph Grossman, Esq., Attorneys for Appellant.
Oscar R. Wilensky, Esq., Attorney for Respondent.

This is an appeal from respondent's denial of an application to transfer a plenary retail consumption license from Wagner's Tavern, Inc. to appellant, and from premises 193 Jefferson Street to premises 212 Main Avenue, Passaic.

No question is raised herein as to the qualification or fitness of appellant to hold a license. It appears that the sole reason for denial was because of the character of the neighborhood to which a transfer of the license is sought.

Main Avenue for a distance of about six blocks, including the block upon which the premises known as 212 Main Avenue are located, is zoned for business. Main Avenue traverses a section of Passaic which is known locally as Passaic Park, and which is strictly residential in character with the exception of the said business section. Passaic Park has its own railroad station, its own bank and this shopping area which, according to the testimony, was designed "to serve that area and anybody else that wants to come in". Although the City of Passaic has issued 167 plenary retail consumption licenses, no such license has been issued to or transferred (at least since January 1934) to any premises located in the Passaic Park district.

Appellant has rented the vacant store located at 212 Main Avenue, and seeks to transfer the license in question to his premises from 193 Jefferson Street, which is located in another section more than a mile from his premises. It appears that, prior to the meeting at which respondent denied the application, a petition containing the names of 426 persons who objected to the transfer of the license was presented to the members of the Board and that a number of objectors personally expressed their disapproval of the transfer at said meeting. After the hearing the five Commissioners comprising the Board voted unanimously to deny the transfer.

At the hearing herein Commissioner Martini, who has been a member of the Board for nearly twenty years, testified that the Board has always felt that the Passaic Park area was a residential community, had its own community of interest right within its own area, and was predominantly residential except for stores that were located on Main Avenue and which are the usual stores in a small neighborhood. He further testified that, many years ago, the Board adopted a policy not to issue or transfer any plenary retail consumption licenses into this area and that, as a matter of fact, many previous applications for such issuance or transfer had been denied. He further stated that:

***we felt that in the exercise of our responsibility as elected officials of the city and in the exercise of the discretionary power vested in us by the statutes and the laws, the license shouldn't be granted."

Commissioner Cruise corroborated to a substantial degree the testimony given by Commissioner Martini.

On behalf of appellant, he and two residents of the neighborhood testified that the transfer of the license would serve the convenience of persons who resided nearby and who are now required to travel almost a mile if they desire to drink on licensed premises. Appellant also presented at the hearing, without objection, a petition signed by 77 individuals who favored the transfer of the license.

It is fundamental that the transfer of a license is not a right inherent in the license. It is, rather, a privilege which the issuing authority may grant or deny in the exercise of its sound discretion. Where it appears that a denial is reasonable, the action of the issuing authority will be sustained, and where it appears that the denial was arbitrary or unreasonable, the action of the issuing authority will be reversed. Cf. Biscamp v. Teaneck, 5 N. J. Super. 172.

The mere fact that the premises in question are located on a street containing other stores does not require the issuing authority to issue or transfer the license. Sanford Drug Co. v. Maplewood Bulletin 71, Item 6. In determining the question as to whether a license should be issued or transferred, an issuing authority may properly consider the character of the neighborhood and the public sentiment of the residents. See Norton v. Camden, Bulletin 97, Item 9 (decided November 29, 1935), wherein it is said:

"A place for the consumption of liquor is not appropriate to nor does it fit into a community of homes. While the store itself is in a technical business district, the immediate neighborhood is highly residential. A jealous regard for the preservation of a strictly home atmosphere in neighborhoods essentially residential is not unreasonable."

This principle has been followed in Ely v. Long Branch, Bulletin 99, Item 2; Gorelick v. Roselle, Bulletin 457, Item 9; Kemo v. Trenton, Bulletin 822, Item 13; Mooney v. Kearny, Bulletin 830, Item 6.

The evidence indicates that two plenary retail distribution licenses have been issued for other premises on Main Avenue. However, the issuance of such licenses (which permit the sale of alcoholic beverages solely for off-premises consumption) does not indicate that the policy of prohibiting the issuance or transfer of plenary retail consumption licenses (which permit the sale of alcoholic beverages for on-premises consumption) is unreasonable. The two types of licenses are distinctly different in character. An issuing authority may reasonably conclude that the evils which might arise from permitting the consumption of alcoholic beverages on licensed premises located in a residential area would not arise from permitting the sale of alcoholic beverages only for consumption off the licensed premises.

After carefully considering the character of the neighborhood, the policy adopted by the members of respondent Board and uniformly applied for many years, and the objections of residents of the Passaic Park area, I conclude that appellant has failed to sustain the burden of proof in showing that the action of respondent was arbitrary or unreasonable. Cf. Biscamp v. Teaneck, *supra*.

The action of respondent will, therefore, be affirmed.

Accordingly, it is, on this 18th day of February, 1952,

ORDERED that the action of respondent Board be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

EDWARD J. DORTON
Acting Director.

- 3. DISCIPLINARY PROCEEDINGS - FALSE ANSWERS IN APPLICATION CONCEALING INTEREST OF OTHERS AND CONCEALING AGREEMENT TO PAY PERCENTAGE OF PROFITS TO OTHERS - FAILURE TO NOTIFY LOCAL ISSUING AUTHORITY OF CHANGE OF FACTS IN APPLICATION - AIDING AND ABETTING NON-LICENSEES TO EXERCISE THE RIGHTS AND PRIVILEGES OF LICENSE - LICENSE SUSPENDED FOR BALANCE OF TERM, WITH LEAVE TO FILE APPLICATION TO LIFT AFTER 35 DAYS, PROVIDED ILLEGAL SITUATION CORRECTED.

In the Matter of Disciplinary Proceedings against

ITALIAN-AMERICAN COLUMBUS RELIEF ASSOCIATION
 Second Street
 Woodbridge Township
 P.O. Port Reading, N.J.,

CONCLUSIONS AND ORDER

Holder of Club License CB-1, issued for the 1950-51 and 1951-52 licensing years by the Township Committee of the Township of Woodbridge.

 Bernard W. Vogel, Esq., Attorney for Defendant-licensee.
 William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

Defendant pleaded non vult to the following charges:

"1. In your application dated May 26, 1950, filed with the Woodbridge Township Committee, upon which you obtained your current club license, in answer to Question 29 which asks: 'Has any individual, partnership, corporation or association other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?', you stated that Biagio Antonelli had such interest but you evaded and suppressed the material facts that John Zullo and Columbus Hall Association also had such interest; such evasion and suppression being in violation of R.S. 33:1-25.

"2. In your aforesaid application, you falsely stated 'No' in answer to Question 30, which asks: 'Have you agreed to pay the club steward, club manager, any employee, or other person, any percentage of the profits derived from the business to be conducted under said license?', whereas in truth and fact you had agreed to pay Biagio Antonelli and John Zullo 10 per cent and 25 per cent, respectively, of such profits and to permit Columbus Hall Association to retain the remainder of the profits; said false statement being in violation of R.S. 33:1-25.

"3. You failed to file with the Woodbridge Township Committee, within 10 days after the occurrence thereof, written notice of a change in the facts set forth in answer to Question 30 of your aforesaid application, such change being that in or about January 1951 you agreed to pay Dominick DePalmo 15 per cent of the profits from your licensed business instead of the 10 per cent previously paid to Biagio Antonelli; your failure to file such notice being in violation of R. S. 33:1-34.

"4. You failed to file with the Woodbridge Township Committee, within 10 days after the occurrence thereof, written notice of changes in facts set forth in answer to Questions 14 and 21 of your aforesaid application, such changes being that on or about January 1, 1951 Dominick Russo became your president succeeding Silvestro Barbato and that Dominick Russo had been convicted on or about December 26, 1937 in the Woodbridge Police Court of the crime of petty larceny; your failure to file such notice being in violation of R. S. 33:1-34.

"5. From on or about July 19, 1940 until the present time you knowingly aided and abetted Columbus Hall Association, and from in or about December 1946 until the present time you knowingly aided and abetted John Zullo, and from in or about September 1946 until in or about January 1951 you knowingly aided and abetted Biagio Antonelli, and from in or about January 1951 until on or about May 1, 1951 you knowingly aided and abetted Dominick DePalmo to exercise, contrary to R. S. 33:1-26, the rights and privileges of your successive club licenses; in violation of R. S. 33:1-52."

Defendant, which has held a club license continuously since 1940, not only permitted the individuals named in the charges to share in the profits of its licensed business but also permitted an affiliate association to retain the remainder of such profits. The licensee enjoyed none of the profits of the licensed business and, by its false answers in the license application, the illegal situation was concealed from the local issuing authority, as was also the change in one of the club's officers and his conviction of crime. Clearly, there has been a "farming out" of the license by defendant. See R.S. 33:1-25.

Although ample opportunity has been afforded defendant to effect and establish a correction of the unlawful situation no proof of such correction has been furnished to this Division. In fact, defendant failed on two occasions to attend hearings which had been scheduled for the purpose. Apparently, the unlawful situation continues to exist.

Under the circumstances I have no alternative other than to suspend defendant's license for the balance of its term. However, leave will be granted for defendant to apply for a lifting of such suspension upon satisfactory proof that the unlawful situation has been corrected, but in no event will the suspension be lifted until defendant's license has been suspended for the minimum period of 35 days. Cf. Re Columbus A. S. & P. Association, Inc., Bulletin 887, Item 6.

Although this proceeding was instituted during the 1950-51 licensing period, it does not abate but remains fully effective against the renewal license for the fiscal year 1951-52. State Regulations No. 16.

Accordingly, it is, on this 20th day of February, 1952,

ORDERED that Club License CB-1, issued for the 1951-52 licensing period by the Township Committee of the Township of Woodbridge to Italian-American Columbus Relief Association, for premises Second Street, Woodbridge Township, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. February 25, 1952; and it is further

ORDERED that in the event a correction of the illegal situation is effected, leave will be given as aforesaid to make application for restoration of the license privileges.

EDWARD J. DORTON
Acting Director.

4. DISCIPLINARY PROCEEDINGS - CHARGES OF SALES BEYOND TERMS OF LICENSE AND AIDING AND ABETTING NON-LICENSEE TO SELL ALCOHOLIC BEVERAGES DISMISSED FOR LACK OF PROOF - SALES TO MINORS - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against FRED D. PAPA T/a ROADSIDE INN 2901 Paterson Plank Road North Bergen, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-76, issued by the Board of Commissioners of the Township of North Bergen.

Arthur C. Agresta, Esq., Attorney for Defendant-licensee. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

Defendant originally pleaded not guilty but during the course of the hearing changed his plea to non vult as to the following charge:

"3. On November 16, 1951, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at your licensed premises to Barbara ---, Peter W. ---, Peter J. ---, Robert S. --- and John J. ---, 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."

The file herein discloses that one of the minors involved in this charge is fifteen, one is seventeen, one is eighteen and two are twenty years of age.

Defendant pleaded not guilty as to charges (1) and (2) which allege, in substance, that he sold a barrel of beer for the purpose of resale, which sale was beyond the terms of his license, and that he aided and abetted an alleged club, not the holder of a license or special permit, to sell alcoholic beverages, in violation of R.S. 33:1-2.

The evidence discloses that, on the evening of November 16, 1951, ABC agents visited defendant's premises and observed a young man carrying a pitcher of beer from the bar to a large rear room. As the agents started to enter the rear room, they were stopped by another young man who told them that a private party was being held and that they would have to pay \$1.25 for "dancing and beer" if they wished to enter. The agents paid to this young man the sum demanded and entered the rear room, in which about forty people were assembled. Subsequent investigation disclosed that, among these forty persons were four minors, each of whom was consuming beer. The fifth minor mentioned in charge (3) had been served at the bar.

It appears that the majority of the persons in the rear room were college students who had been meeting weekly at defendant's premises. There is no evidence that these students had ever formed a club or other type of organization. Arrangements for these meetings seem to have been made between defendant and two of these students, one of whom is now in military service and the other of whom is the young man who stopped the agents. It is clear that defendant had made arrangements with one of these two students for the sale of a keg of beer; that he tapped the keg and served the

beer from this keg in pitchers which were carried by others to the rear room. Defendant testified that he had no knowledge that any charge was being made to enter the rear room. He admitted that he had seen persons stopped but said that he understood that this was done "so as to keep anybody that didn't belong to their group out". There is no evidence that any tickets were sold for the affair. When questioned at the hearing as to whether he had told defendant that he was going to charge for the beer, the student who had stopped the agents testified: "I don't believe I did."

Of course, if defendant knew or had reason to believe that an admission was being charged, the sale of beer made by him would be construed as a sale made for the purpose of resale. Re Gross, Bulletin 863, Item 11. However, I conclude that the evidence is not sufficient to establish by a preponderance thereof that defendant knew or had reason to believe that an admission was being charged. Hence I shall dismiss charges (1) and (2).

Defendant has no prior record. Considering the age of the youngest minor, the number of minors involved, and defendant's complete failure to supervise the activities in the rear room of his licensed premises, I shall suspend the license for a period of thirty days on Charge (3). Re Lindgren, Bulletin 853, Item 11.

Accordingly, it is, on this 26th day of February, 1952,

ORDERED that Plenary Retail Consumption License C-76, issued by the Board of Commissioners of the Township of North Bergen to Fred D. Papa, t/a Roadside Inn, for premises 2901 Paterson Plank Road, North Bergen, be and the same is hereby suspended for thirty (30) days, commencing at 3:00 a.m. March 4, 1952, and terminating at 3:00 a.m. April 3, 1952.

EDWARD J. DORTON
Acting Director.

5. DISCIPLINARY PROCEEDINGS - PEDDLING AND TRANSPORTATION OF ALCOHOLIC BEVERAGES IN VIOLATION OF RULE 3 OF STATE REGULATIONS NO. 17 - SOLICITING FROM HOUSE TO HOUSE THE PURCHASE OF ALCOHOLIC BEVERAGES - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MICHAEL N. CAGGIANO &)
NICHOLAS J. CAGGIANO)
T/a M. CAGGIANO & SONS)
68 and 70-72 Glenridge Avenue)
Montclair, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution License D-3, issued by the Board of Commissioners of the Town of Montclair.)
- - - - -)

Lindabury, Steelman & Lafferty, Esqs., by James L. R. Lafferty, Esq., Attorneys for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

Defendants pleaded non vult to charges alleging that (1) they sold alcoholic beverages from a motor vehicle on a public highway, in violation of Rule 3 of State Regulations No. 17; (2) they solicited from house to house the purchase of alcoholic beverages by

personal visits and allowed, permitted and suffered such solicitation, in violation of Rule 3 of State Regulations No. 20; and (3) they transported and delivered alcoholic beverages in their licensed vehicle without the driver thereof having in his possession bona fide invoices or manifests, in violation of Rule 3 of State Regulations No. 17.

The file in the instant case discloses that on September 22, 1951, an ABC agent who was then in a store, heard Rocco Caggiano, an employee of defendants, making an inquiry as to whether the owner of the store "wanted anything". Later, the ABC agent observed defendants' truck drive up to the store and saw Rocco Caggiano enter the store carrying a box containing several bottles of liquor. As the defendants' employee was leaving the store the agent ordered from him a pint bottle of whiskey. Defendants' employee obtained from defendants' truck a bottle of whiskey which he placed in a paper bag and handed to the ABC agent.

An examination of defendants' records made on September 29, 1951 indicated that between July 1, 1950 and September 29, 1951 alcoholic beverages were transported without the driver of the vehicle having in his possession bona fide, authentic and accurate delivery slips, invoices, manifests or similar documents, setting forth the name and address of the purchaser, the brand, size of container and quantity of each item of the alcoholic beverages being delivered and transported.

Defendants have no previous adjudicated record. I shall, therefore, suspend their license on charges (1) and (3) for a period of fifteen days (Re Rütter's Inc., Bulletin 894, Item 8); and on charge (2) for a period of ten days (Re Saul, Bulletin 890, Item 5), making a total suspension of twenty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 21st day of February, 1952,

ORDERED that Plenary Retail Distribution License D-3, issued by the Board of Commissioners of the Town of Montclair to Michael N. Caggiano & Nicholas J. Caggiano, t/a M. Caggiano & Sons, 68 and 70-72 Glenridge Avenue, Montclair, be and the same is hereby suspended for a period of twenty (20) days, commencing at 9:00 a.m. March 4, 1952, and terminating at 9:00 a.m. March 24, 1952.

EDWARD J. DORTON
Acting Director.

6. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PREVIOUS RECORD - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary)
 Proceedings against)

JEREMIAH DOS SANTOS)
 T/a JERRY'S TAVERN)
 211 North 3rd Street)
 Harrison, N. J.,)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consump-)
 tion License C-52, issued by the)
 Town Council of the Town of)
 Harrison.)

 Jeremiah Dos Santos, Defendant-licensee, Pro Se.
 Edward F. Ambrose, Esq., appearing for Division of Alcoholic
 Beverage Control.

Defendant pleaded not guilty to the following charge:

"On Saturday night, January 5, 1952, and early Sunday morning, January 6, 1952, and on divers days prior thereto, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at your licensed premises to S/A Thomas J. ---, U. S. Navy and Peter J. ---, 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."

At the hearing Thomas ---, 19 years of age, testified that he entered defendant's licensed premises on Saturday night, January 5, 1952; that he bought a glass of beer from the bartender, John Coppolino; that, while he was consuming this glass of beer, William Doran, an adult, entered the licensed premises and that, after Doran also had a drink, they played several games of shuffleboard. Thomas --- further testified that, after each game, they returned to the bar and purchased beer which they consumed. Thomas --- also testified that he had been in the licensed premises on the previous Saturday at which time he purchased and drank "six or seven" glasses of beer all of which were served to him by the bartender.

William Doran substantially corroborated the testimony given by Thomas ---.

The other minor, Peter ---, 20 years of age, testified that he had no alcoholic beverages at the licensed premises on January 5, 1952 and that he did not know what kind of drinks Thomas --- had. However, he claimed that he had been frequenting the licensed premises "on and off" for a period of "six months to a year" during which time he had been served and had consumed beer at the premises. He further testified that, on New Year's Eve (December 31, 1951), he had been served and had consumed one glass of beer there.

Both minors claimed that they were never questioned at the licensed premises as to their respective ages.

Two ABC agents testified that they entered defendant's premises early on the morning of January 6, 1952. While they did not see either minor being served with or consuming alcoholic beverages after they entered, they did observe both minors on the premises.

The licensee, who was his only witness, did not deny that the two minors had been in his licensed premises on January 5, 1952 or

on previous occasions. He alleged, however, that each of them had always purchased "soda" and denied that either had ever purchased or consumed alcoholic beverages on his premises.

From all of the evidence I am convinced that the testimony of the Division's witnesses is true. I conclude that Thomas --- purchased and consumed alcoholic beverages upon the licensed premises on January 5, 1952 and on the previous Saturday. I conclude that Peter --- purchased and consumed alcoholic beverages on the licensed premises on December 31, 1951. I therefore find defendant guilty as charged.

The licensee has a prior record. His license was suspended by the local issuing authority for ten days, effective October 22, 1951, for selling alcoholic beverages during prohibited hours, in violation of State Regulations No. 38. Considering the prior dissimilar violation, I shall suspend defendant's license for a period of fifteen days. Re Maione, Bulletin 903, Item 8.

Accordingly, it is, on this 25th day of February, 1952,

ORDERED that Plenary Retail Consumption License C-52, issued by the Town Council of the Town of Harrison to Jeremiah Dos Santos, t/a Jerry's Tavern, 211 North 3rd Street, Harrison, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. March 3, 1952, and terminating at 2:00 a.m. March 18, 1952.

EDWARD J. DORTON
Acting Director.

7. DISCIPLINARY PROCEEDINGS - CHARGES OF PERMITTING OBSCENE LANGUAGE AND A BRAWL ON LICENSED PREMISES DISMISSED FOR LACK OF PROOF.

In the Matter of Disciplinary Proceedings against)

ALFONSO DiBERNARDO)
69 Wilson Street)
Trenton 8, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-204, issued by the Board of Commissioners of the City of Trenton.)

-----)
Sidney Simandl, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

Defendant pleaded not guilty to the following charges:

"1. On August 19, 1951, you allowed, permitted and suffered foul, filthy and obscene language in and upon your licensed premises; in violation of Rule 5 of State Regulations No. 20.

"2. On the occasion aforesaid, you allowed, permitted and suffered a brawl, act of violence and disturbance in and upon your licensed premises; in violation of Rule 5 of State Regulations No. 20."

From the testimony herein, the following facts appear: Shortly before 1:00 a.m. on August 19, 1951, Rose Williams entered defendant's premises and proceeded to the bar which was being tended by the licensee and one of his bartenders. Rose and another patron, Willie Tann, soon became involved in an argument which started when Rose demanded that Willie repay certain money which she claimed was

due to her. This argument took place at the bar and became not only loud but obscene, both participants using shockingly vulgar and degrading epithets and language. Rose and three other patrons, who testified on behalf of the Division, agree that the licensee remonstrated more than once with the participants. They agree also that the argument ceased periodically only to be resumed again with full vigor. The licensee threatened several times to put Willie out of the premises if he did not discontinue the use of the objectionable language. When Willie not only refused to heed the licensee's warning but also became obscenely abusive to him, the licensee came from behind the bar, took Willie by the arm and started to lead him toward the door. Most of the witnesses testified that Willie then produced a razor blade and that the licensee immediately thereafter struck Willie with his fist. While there is some conflict as to whether the patron fell to the floor, all witnesses agree that the licensee ultimately ejected the patron from the premises without further blows being struck. The licensee then returned to the barroom and, when Willie threatened to reenter, the licensee telephoned to the police.

The entire elapsed time from the beginning of the argument until Willie was ejected from the premises was variously estimated by the witnesses as "five minutes" or "not very long", and, taken together, the testimony indicates that it was not more than six or seven minutes. There is no evidence that either Rose or Willie was intoxicated and, hence, there is no evidence that the licensee or his bartender served drinks to intoxicated persons as in the case of Plikaytis v. Harrison, Bulletin 754, Item 1.

In addition to the testimony above referred to, two signed statements obtained from defendant by an ABC agent were introduced in evidence. They do not differ substantially from the testimony adduced by the witnesses at the hearing.

As to Charge 1: There is not the slightest doubt that the language used by Willie and Rose was foul, filthy and obscene, but the evidence falls far short of establishing that the licensee "allowed, permitted or suffered" its use on the licensed premises. Indeed, he appears not only to have objected to it and warned the patrons to stop its use, but actually took steps to evict one of the persons who used the objectionable language.

As to Charge 2: It is clear that a disturbance occurred on the licensed premises on the night in question, but, here again, the evidence falls short of establishing that the licensee "allowed, permitted or suffered" it to occur. While the strongly recommended course is to call the police when patrons become obstreperous (Re Polster, Bulletin 388, Item 10), nevertheless a licensee may use reasonable force in self defense if and when suddenly and unjustifiably attacked while in the legitimate discharge of his duty as a licensee. It appears that the licensee, while in the process of escorting from the licensed premises a highly objectionable patron, was suddenly threatened with a dangerous weapon and that he used no more force than was necessary to protect himself. Under these circumstances I cannot find that the licensee allowed, permitted or suffered a brawl, act of violence or disturbance upon the licensed premises within the contemplation of the rule.

In deciding this case I have considered the fact that defendant has conducted his licensed premises for more than ten years without any previous complaints.

On the evidence herein I find defendant not guilty as to both charges.

Accordingly, it is, on this 27th day of February, 1952,

ORDERED that the charges herein be and the same are hereby dismissed.

EDWARD J. DORTON
Acting Director.

8. AUTOMATIC SUSPENSION - SALE TO MINOR - LICENSE PREVIOUSLY SUSPENDED BY LOCAL ISSUING AUTHORITY FOR 10 DAYS - APPLICATION TO LIFT GRANTED.

In the Matter of a Petition by

ALEX MALIKEN
104 Hillside Avenue
Neptune City, N. J.
(later transferred to premises
at Route 35 and Hillside Avenue,
Neptune City, New Jersey),

ON PETITION
CONCLUSIONS AND ORDER

To Lift the Automatic Suspension of
Plenary Retail Distribution License
D-1, issued by the Borough Council
of the Borough of Neptune City.

J. Stanley Herbert, Esq., by Howard Isherwood, Jr., Esq., Attorney
for Petitioner.

It appears from a verified petition filed herein that on February 15, 1952, Alex Maliken was sentenced in the Monmouth County Superior Court to pay a fine of \$100.00 after he had pleaded non vult to an indictment alleging that he had sold alcoholic beverages to a minor.

It appears from the records of the Division of Alcoholic Beverage Control that on September 24, 1951, the Borough Council of the Borough of Neptune City suspended the license held by petitioner for a period of ten days after he had been found guilty in disciplinary proceedings of a charge alleging that he had sold alcoholic beverages to a minor, in violation of Rule 1 of State Regulations No. 20. As a result of said suspension, no alcoholic beverage activity was conducted at the licensed premises from 10:00 p.m. September 30, 1951, to 10:00 p.m. October 10, 1951.

The indictment in the criminal proceedings and the charge in the disciplinary proceedings were based upon the same facts. The case concerns the sale of bottled beer in original containers to a minor who was then seventeen years and ten months of age.

The conviction in the criminal proceedings has resulted in the automatic suspension of the license held by petitioner for the balance of its term. R.S. 33:1-31.1. The petition herein prays that the automatic suspension of the license may be lifted.

After reviewing the facts of the case, I am of the opinion that the suspension heretofore imposed by the municipal issuing authority was adequate under the circumstances of the case. Hence, the relief sought herein will be granted.

Accordingly, it is, on this 15th day of February, 1952,

ORDERED that the automatic suspension of License D-1, held by Alex Maliken, for premises at 104 Hillside Avenue, Neptune City (and later transferred to premises at Route 35 and Hillside Avenue, Neptune City), be and the same is hereby lifted, and said license is hereby restored to full force and operation, effective immediately.

EDWARD J. DORTON
Acting Director.

9. DISQUALIFICATION - APPLICATION TO LIFT - ENGAGING IN ALCOHOLIC BEVERAGE BUSINESS AFTER BEING ADVISED OF INELIGIBILITY - APPLICATION DENIED WITH LEAVE TO REAPPLY NOVEMBER 21, 1952.

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

CONCLUSIONS
AND ORDER

Case No. 943.
- - - - -)

On December 10, 1943 petitioner pleaded nolo contendere to the charge of aiding and abetting a lewd exhibition, and as a result thereof a Judge of a County Court imposed a sentence as follows: "Sentence suspended, probation three years, to pay \$30.00 a month for 33 months, payment not to start until after third month." Petitioner has never been convicted of any other crime.

At the hearing herein three witnesses (a lawyer and two businessmen), who have known petitioner twenty or more years, testified that petitioner bears a reputation for being a law-abiding person in the community in which he lives. The Acting Chief of Police of the municipality in which petitioner resides has indicated that no charges or investigations are pending concerning petitioner.

I would have no hesitancy in granting relief in this proceeding were it not for the following facts: Pursuant to an application made by petitioner to the State Commissioner to determine petitioner's eligibility to be associated with the alcoholic beverage industry, Commissioner Driscoll, on February 21, 1946, held that in his opinion the crime of aiding and abetting a lewd exhibition involved the element of moral turpitude. Case No. 566, Bulletin 698, Item 4. Petitioner was at that time advised of his disability by sending him a copy of the findings made in said case. The letter covering the findings also contained a paragraph in part as follows: "Please note that you may not work for any liquor licensee in this State." Despite the ruling of the Commissioner, petitioner was found to be working on licensed premises on divers days during November 1947, the last date thereof being November 21, 1947. Re Kravis, Bulletin 801, Item 2; Kravis v. Hock, 136 N.J.L. 161.

These proceedings are aptly termed rehabilitation proceedings. The power of the Director may be exercised only if and when he determines "that at least five years have elapsed from the date of the conviction, that the petitioner has conducted himself in a law-abiding manner during that period, and that his association with the alcoholic beverage industry will not be contrary to the public interest". R. S. 33:1-31.2. I must be satisfied that petitioner has been rehabilitated, that he is honest and law-abiding, and has a proper respect for truth and probity. Cf. Case No. 172, Bulletin 484, Item 9.

In view of the fact that petitioner worked on licensed premises after he had been advised that he was convicted of a crime involving moral turpitude which rendered him statutorily disqualified to be associated with the alcoholic beverage industry, I shall not remove his disqualification at this time.

Accordingly, it is, on this 28th day of February, 1952,

ORDERED that the petition herein be and the same is hereby dismissed, with leave to file a new petition after November 21, 1952, which petition will be considered on its merits at the proper time.

EDWARD J. DORTON
Acting Director.

10. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

LENA & EDWARD STANSKY)
T/a PLANTATION INN)
N.W. Cor. Federal & York Streets)
Burlington (City), N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-13, issued by the Common Council of the City of Burlington.)

-----)
Lena and Edward Stansky, Defendant-licensees, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

The defendants have pleaded non vult to a charge alleging that they sold and served alcoholic beverages to a minor, in violation of Rule 1 of State Regulations No. 20.

The file in the instant case discloses that on January 31, 1952, an employee of defendants served a glass of whiskey and a glass of beer to a soldier twenty years of age.

Since no aggravating circumstances appear, and the defendants have no prior record, I shall impose the usual ten-day suspension, with a remission of five days for the plea entered herein, leaving a net suspension of five days. Re Ferrazzano & Jones, Bulletin 916, Item 9.

Accordingly, it is, on this 20th day of February, 1952,

ORDERED that Plenary Retail Consumption License C-13, issued by the Common Council of the City of Burlington to Lena & Edward Stansky, t/a Plantation Inn, N. W. Cor. Federal & York Streets, Burlington (City), be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 a.m. March 3, 1952, and terminating at 2:00 a.m. March 8, 1952.

EDWARD J. DORTON
Acting Director.

11. DISCIPLINARY PROCEEDINGS - SALE BELOW PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 10 DAYS; LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JACOB M. SCHERKER)
177 Main Street)
Fort Lee, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution License D-14, issued by)
the Mayor and Council of the)
Borough of Fort Lee.)

Jacob M. Scherker, Defendant-licensee, Pro Se.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

Defendant pleaded non vult to a charge alleging that he sold an alcoholic beverage at retail at less than its price, as listed in the Minimum Consumer Resale Price List then in effect, in violation of Rule 5 of State Regulations No. 30.

On February 8, 1952 an ABC agent purchased from the licensee, a one-half gallon (ice decanter) of Monarch's Manischewitz Concord Wine for \$4.90. The minimum price for this wine, as listed in the then current "Complete List of New Jersey Minimum Consumer Resale Prices of Alcoholic Beverages" was \$4.91 per one-half gallon (ice decanter).

Defendant has no prior adjudicated record. Under the circumstances, the license will be suspended for the minimum period of ten days, less five days for the plea, making a net suspension of five days. Re Gorcica, Bulletin 923, Item 10.

Accordingly, it is, on this 28th day of February, 1952,

ORDERED that Plenary Retail Distribution License D-14, issued by the Mayor and Council of the Borough of Fort Lee to Jacob M. Scherker, 177 Main Street, Fort Lee, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. March 10, 1952, and terminating at 9:00 a.m. March 15, 1952.

EDWARD J. DORTON
Acting Director.

12. DISQUALIFICATION - APPLICATION TO LIFT PREVIOUSLY DENIED - APPLICATION HEREIN GRANTED.

In the Matter of an Application)
to Remove Disqualification because)
of a Conviction, Pursuant to R. S.)
33:1-31.2.)
Case No. 955.)

CONCLUSIONS
AND ORDER

On December 20, 1950, the Director dismissed a prior petition by this petitioner for removal of his disqualification resulting from conviction of crimes involving moral turpitude. Re Case No. 880, Bulletin 894, Item 5.

It is not necessary to set forth again petitioner's criminal record which was recited in full in the Conclusions and Order in the prior case. Suffice it to say that his record involves numerous offenses committed between 1919 and 1944. After his last conviction he served three months in a Penitentiary and was discharged on February 13, 1945.

Petitioner has spent many years of his life in the taxicab business, but recently has been employed in the restaurant business. At the hearing herein petitioner testified that he has not been in any trouble of any kind during the seven years last past. Petitioner produced three witnesses -- one a taxicab owner who had formerly employed him; one a pharmacist with whom petitioner frequently deals, and one a county employee who frequented restaurants either owned by petitioner or at which petitioner worked. Each of these witnesses testified that he had known petitioner for more than five years last past, and that he had been law-abiding during that period. From the evidence it would appear that petitioner has been law-abiding for at least the seven years last past.

While petitioner's past record is an unenviable one, his conduct during the past seven years indicates to my satisfaction that he has "learned his lesson". He is now over fifty years of age, and his opportunities for gainful employment are limited. Petitioner testified that his brother, by whom he is presently employed as a short-order cook and chef in an unlicensed restaurant, intends to engage in the tavern business and has offered him employment in that business as a short-order cook and chef and to "take care of some business for him and look out for his interests when he is not there".

Under all of these circumstances, I am satisfied that petitioner has rehabilitated himself and that his association with the alcoholic beverage industry will not be contrary to the public interest. Hence I shall lift petitioner's present disqualification.

Accordingly, it is, on this 29th day of February, 1952,

ORDERED that petitioner's statutory disqualification, because of his convictions of the crimes set forth in Bulletin 894, Item 5, be and the same is hereby removed in accordance with the provisions of R. S. 33:1-31.2.

EDWARD J. BORTON
Acting Director.

13. STATE LICENSES - NEW APPLICATIONS FILED.

Armstrong Trucking Co., Inc., 137-139 Pavonia Ave., 138 - 8th St., 143-145 Provost St., Jersey City, N. J.
Application for additional warehouse at 135-141 Provost Street, Jersey City filed March 7, 1952.

Maurice G. Warren, t/a Cumberland Beverage Co.
70 W. Landis Ave., Landis Township, N. J.
Application filed March 11, 1952 for transfer of State Beverage Distributor's License SBD-57 from Samuel, Sadie and Stanton Rubin, t/a Savoy Beverage Co., 525 Elmer St., Vineland, N. J.