

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

BULLETIN 680

OCTOBER 17, 1945.

1. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

HEREIN OF CHANGE IN POLICY WITH RESPECT TO "ONE BOTTLE" CASES AND LENGTH OF SUSPENSION.

In the Matter of Disciplinary Proceedings against

NELLIE Y. RUDOLPH

T/a Penn Wood Cafe & Hotel

N/E Cor. Garfield & New Jersey Aves.

Wildwood, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-38, issued by the Board of Commissioners of the City of Wildwood.

A. J. Cafiero, Esq., Attorney for Defendant-licensee.

Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that she possessed a 4/5 quart bottle of "Canadian Club Blended Canadian Whiskey 90.4 Proof", which contained an alcoholic beverage not genuine as labeled, in violation of N. S. 33:1-50.

On August 23, 1945, an ABC agent seized the bottle in question after testing the defendant's open stock of sixteen assorted brands of liquor. Chemical analysis confirmed the licensee's admission that she had refilled the "Canadian Club" bottle with another brand of whiskey, namely, "Harwood Canadian Whiskey."

I am, of course, aware that the acute shortage of certain brands of liquor has caused some licensees to yield to the temptation of favoring their cash registers over their duties and obligations as proprietors of a licensed business. This is well exemplified in the instant case. An examination of the defendant's purchase invoices indicates that, for the two-month period prior to the agent's visit, she had been able to purchase only one bottle of Canadian Club whereas, during the same period, she had received three cases of the more readily available Harwood whiskey.

It has been the policy of the Department of Alcoholic Beverage Control to withhold the institution of proceedings against a licensee where only one bottle containing questionable alcoholic beverages was found by ABC agents on licensed premises, unless (1) the only positive and unmistakable conclusion that could be drawn from the discrepancy in content was that the bottle had been "refilled" with another alcoholic beverage, or (2) a licensee had a prior record, or (3) had been previously warned that the discovery of a bottle or bottles containing questionable liquor on his licensed premises would result in the institution of disciplinary proceedings.

In the absence of these three circumstances, the Department has heretofore, upon the seizure of only one bottle containing questionable liquor, given the licensee the benefit of the doubt and warned

him that any recurrence of the presence of questionable liquor on the licensed premises would be cause for the institution of disciplinary proceedings. Cf. Vittoria Castle, Bulletin 557, Item 11.

While in the instant case the analysis of the contents of the seized bottle by the chemist for the Department disclosed a positive and unmistakable refill, this is an appropriate time for me to announce that, because of the recent increase in the number of cases involving refills, it is necessary, for the present, to institute disciplinary proceedings in all one-bottle cases where the contents are alleged to be not genuine. This change in the Department's policy is, I regret to state, apparently necessary in view of the number of recent cases where foolish licensees have succumbed to the temptation to refill bottles bearing popular brands with slower moving beverages.

A change in policy with respect to the length of the suspension to be imposed in refill cases also appears to be in order.

In August of 1944 I pointedly warned all licensees that I intended to continue to suppress the practice of adulteration or "refilling" and that, if necessary, I was prepared to increase the length of the suspension in illicit liquor cases. Re Brooks, Bulletin 633, Item 11. See also the recent case of Re Cappuccino, Bulletin 678, Item 8.

The minimum penalty to be imposed in this and similar cases, in the absence of a prior record or other aggravating circumstances (including a greater number of bottles), will be fifteen (15) days. Whether the minimum suspension is to be increased or decreased in the future in these cases is largely dependent upon the ability of licensees to observe the law and refrain from "refilling." All licensees are, of course, aware that the privilege of their license is subject to revocation as well as to suspension for violation of the law. Licensees may expect commensurately longer suspensions, or even revocation, where they have a prior record or there are aggravating circumstances. I hope that it will not be necessary for me to take even more drastic action than that presently contemplated. The interest of the public, however, is paramount. New Jersey is not a haven for bootleggers or chiselers. A customer is entitled to receive the beverage ordered.

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

ORDERED, that Plenary Retail Consumption License C-38, issued by the Board of Commissioners of the City of Wildwood to Nellie Y. Rudolph, t/a Penn Wood Cafe & Hotel, for premises on N/E Corner Garfield & New Jersey Avenues, Wildwood, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. October 23, 1945, and terminating at 2:00 a.m. November 7, 1945.

ALFRED E. DRISCOLL
Commissioner.

2. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary
Proceedings against

MORRIS ZEIDNER & NATHAN R. COHEN
T/a LAMBS CLUB
501 Pacific Avenue
Atlantic City, N. J.,

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consump-
tion License C-236 issued by the
Board of Commissioners of the City
of Atlantic City.

Bertram M. Saxe, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendants have pleaded non vult to a charge alleging that they possessed three 4/5 quart bottles labeled "Canadian Club Blended Canadian Whisky", the contents of which were not genuine as labeled, in violation of R. S. 33:1-50.

On August 17, 1945 an investigator of the Department of Alcoholic Beverage Control seized the three bottles mentioned in the charge when preliminary tests indicated that the contents were not genuine as labeled. Subsequent analysis by a chemist employed by the Department of Alcoholic Beverage Control disclosed that the contents of the seized bottles varied substantially in solids and acids from the contents of a genuine bottle of the same product.

At the time of the seizure Nathan Cohen, one of the licensees, verbally admitted to the agent that he had refilled the three seized bottles with Harwood whiskey because he could not obtain any Canadian Club whiskey.

As repeatedly pointed out, a patron is entitled to receive exactly what he orders. Retailers are not permitted to refill bottles. Re Leda, Inc., Bulletin 678, Item 1.

Defendants have no previous adjudicated record. I shall suspend defendants' license for a period of twenty days.

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

ORDERED, that Plenary Retail Consumption License C-236, issued by the Board of Commissioners of the City of Atlantic City to Morris Zeidner and Nathan R. Cohen, t/a Lambs Club, for premises 501 Pacific Avenue, Atlantic City, be and the same is hereby suspended for twenty (20) days, commencing at 12:01 a.m. October 23, 1945, and terminating at 12:01 a.m. November 12, 1945.

ALFRED E. DRISCOLL
Commissioner.

3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF MUNICIPAL REGULATION - PERMITTING FEMALE EMPLOYEES TO ACCEPT ALCOHOLIC BEVERAGES AS GIFTS FROM CUSTOMERS, IN VIOLATION OF RULE 22 OF STATE REGULATIONS NO. 20 - PERMITTING LEWD AND IMMORAL ACTIVITIES ON THE LICENSED PREMISES, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 20 - CONCEALING MATERIAL FACT IN LICENSE APPLICATION, IN VIOLATION OF R.S.33:1-25 - FAILING TO PROPERLY ADVERTISE NOTICE OF INTENTION AS REQUIRED BY RULE 2 OF STATE REGULATIONS NO. 2 AND R. S. 33:1-25 - LICENSE REVOKED.

In the Matter of Disciplinary)
 Proceedings against)

BIXBY'S INC.)

State Route 17)

Wood-Ridge, New Jersey,)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consump-)
 tion License C-6 issued by the)
 Mayor and Borough Council of the)
 Borough of Wood-Ridge.)

 A. Michael Lepore, Esq., Attorney for Defendant-licensee.
 Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic
 Beverage Control.

BY THE COMMISSIONER:

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

- (1) Selling alcoholic beverages during prohibited hours on June 28, June 30 and July 1, 1945, in violation of Section 16 of the local ordinance of the Borough of Wood-Ridge;
- (2) Permitting female employees to accept alcoholic beverages as gifts from customers and patrons on June 26, June 27, June 28, June 29, June 30 and July 1, 1945, in violation of Rule 22 of State Regulations No. 20;
- (3) Permitting lewd and immoral activities (obscene and indecent songs) on the licensed premises on June 27, June 28, June 30 and July 1, 1945, in violation of Rule 5 of State Regulations No. 20;
- (4) Concealing a material fact (false answer to Question 33) in its application for a plenary retail consumption license, in violation of R. S. 33:1-25;
- (5) Failing to cause proper notice of intention to be published as prescribed by Rule 2 of State Regulations No. 2, in that it failed to list all holders of more than one per cent. of the capital stock of the corporation as required, such failure being in violation of R. S. 33:1-25.

The mere recital of the above charges, to which the defendant has entered a plea in these proceedings tantamount to an admission of guilt, is sufficient in itself to warrant the imposition of stern punishment.

A bare recital of the violations, however, does not tell the whole story. One of the officers and stockholders of the defendant corporation, and the person apparently entrusted with the active management of the defendant's business, was Gable Porter. In the Spring of this year he petitioned the Commissioner for an order lifting his statutory disqualification to hold a liquor license or to be employed by a liquor licensee because of his previous conviction, in 1931, of a crime involving moral turpitude. His personal disqualification likewise disqualified any corporation in which he (1) owned "directly or indirectly, more than ten per cent." of the corporate stock, or (2) if a director or officer, he owned "one or more per cent." of the corporate stock. In the latter proceedings brought before me pursuant to the provisions of R. S. 33:1-31.2, Porter, with an unenviable record as evidenced by his criminal convictions, represented that he had made a conscientious attempt to rehabilitate himself, and that he had been a law-abiding citizen for the five years just past. Three character witnesses supported Porter's assertion that for more than five years past he had been a law-abiding citizen. On the basis of the investigation of his previous conduct, the testimony presented, and the plea that Porter had learned his lesson, I exercised my discretion in his favor and entered an order removing his disqualification.

In the instant proceedings, the character of the violations -- repeated day after day by the defendant, apparently as a matter of regular practice -- indicates a deliberate and contemptuous disregard of the law on the part of the licensee and its officers, one of whom at least was under more than the normal obligation of a citizen to obey the requirements of the State and municipality.

It is apparent that Porter not only did not learn his lesson, but that he took advantage of the exercise of discretionary authority in his favor to misdirect the defendant into a shameful path of violations of the law.

Defendant's license will be revoked. While I recognize that there are other stockholders of the defendant corporation perhaps less blameworthy than Porter, this does not in itself relieve the corporation of its obligation to pay the penalty for its violation of the law. Those who choose to adopt the corporate cloak in their business affairs must expect to suffer the consequences when, by affirmative action or by passive acquiescence, they permit the corporation to misbehave.

Accordingly, it is, on this 8th day of October, 1945,

ORDERED, that Plenary Retail Consumption License C-6, issued by the Mayor and Borough Council of the Borough of Wood-Ridge to Bixby's Inc., for premises on State Route 17, Wood-Ridge, be and the same is hereby revoked, effective at 6:00 a.m. Friday, October 12, 1945.

ALFRED E. DRISCOLL
Commissioner.

4. AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - SALE OF ALCOHOLIC BEVERAGES TO MINORS - LICENSEE PAID FINE OF \$100.00 - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS BY LOCAL ISSUING AUTHORITY - APPLICATION TO LIFT GRANTED UPON TERMINATION OF AN ADDITIONAL FIVE-DAY SUSPENSION.

In the Matter of a Petition by)

JOSEPH V. GALLO and)

JOHN AMMIRATO)

T/a THE WIGWAM)

State Highway 6)

Mount Olive Township)

P.O. Budd Lake, N. J.,)

ON PETITION
CONCLUSIONS AND ORDER

To lift the automatic suspension)
of Plenary Retail Consumption)
License C-16 issued by the Town-)
ship Committee of the Township of)
Mount Olive.)
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BY THE COMMISSIONER:

It appears from petition filed herein that on October 5, 1945, Joseph V. Gallo, one of the petitioners, pleaded guilty in a Court of Special Sessions, Morris County, to an indictment alleging that he had aided and abetted in the sale of alcoholic beverages to minors, as a result of which he was sentenced to pay a fine of \$100.00, which he paid. On October 5, 1945, at 7:00 p.m., agents of the Department of Alcoholic Beverage Control picked up the license held by petitioners, and no business has been conducted thereunder since that time.

It further appears from the records of the Department of Alcoholic Beverage Control that the Township Committee of the Township of Mount Olive suspended the license held by petitioners for a net period of fifteen days, effective from September 11, 1945 to September 26, 1945, after they had pleaded guilty in a disciplinary proceeding to charges alleging that they had sold alcoholic beverages to minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The indictment in the criminal proceedings and the charges in the disciplinary proceedings were based upon the same facts. Since Joseph V. Gallo was a partner in the business conducted by petitioners, his conviction in the criminal proceedings has resulted in an automatic suspension of the license 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.

In my opinion, the penalty imposed in the disciplinary proceedings was inadequate. The case concerned the sale to, and consumption of alcoholic beverages by, three minors who were then 16, 17 and 18 years of age. Moreover, on July 31, 1945, a license then held by petitioner Joseph V. Gallo, and transferred during the pendency of the disciplinary proceedings, was suspended for a period of ten days after he had pleaded non vult to a charge alleging that he had knowingly aided and abetted another individual to exercise the rights and privileges of his license. I believe that a suspension for at least twenty-five days (less five days for the plea) should have been imposed in the disciplinary proceedings conducted

by the Township Committee. The purpose of the automatic suspension is to insure that, when a licensee is convicted in a criminal court, there is swift and sure penalty against the license. It has been the policy to lift a suspension when, and only when, the license has been suspended for what appears, in view of all the facts, to be a sufficiently penalizing length of time. Re Solitare, Bulletin 538, Item 4.

The automatic suspension has been in effect since 7:00 p.m. October 5, 1945 and, allowing for the fifteen days served under the suspension imposed by the Township Committee, a total suspension of twenty days will have been served at 7:00 p.m. on Wednesday, October 10, 1945. I shall not lift the automatic suspension until 7:00 p.m. Wednesday, October 10, 1945.

Accordingly, it is, on this 8th day of October; 1945,

ORDERED, that the automatic suspension of the license aforesaid be lifted, effective at 7:00 p.m. Wednesday, October 10, 1945. Until then the license stands suspended.

ALFRED E. DRISCOLL
Commissioner.

5. RETAIL LICENSES - REFUND - WHERE LICENSEE VOLUNTARILY SURRENDERS LICENSE ON LEARNING IT WAS IMPROVIDENTLY ISSUED AND LICENSEE WAS NOT GUILTY OF ANY MISREPRESENTATION OR WRONGDOING.

October 2, 1945

Morris E. Still, Borough Clerk
Lawnside, N. J.

Dear Mr. Still:

Your letter of September 6th advises us that William ("Willie") Wilcox has surrendered his license for premises at west side Evesham Avenue, Lawnside. This surrender followed our advice to Mr. Wilcox that his license had been improvidently issued to him since he lacked requisite right to possession of the premises.

For our records, will you kindly advise us what refund was made to Mr. Wilcox. Normally, under the Alcoholic Beverage Law (R. S. 33:1-31), a municipality, on surrender of a license, is to retain 50% of the fee and is also to retain a per diem fee, based on the full annual fee, for each day the license was in existence.

However, in the present case, it appears that the refund should be made on the equitable principle that the municipality shall deduct 10% of the fee, which would have been the amount retained had the application originally been denied, plus a per diem fee, based on the full annual fee, for each day the license was in existence. This is the formula of refund in cases where a license is cancelled in formal proceedings because of having been issued improvidently. See Re Barkman, Bulletin 126, Item 6; Re Fitzsimmons, Bulletin 287, Item 2. The same formula should, in fairness, be followed where the licensee, on suggestion of the Department or the municipality, voluntarily surrenders his license without need of cancellation or other proceedings being brought and has not been guilty of any misrepresentation or wrongdoing.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary
Proceedings against

HAROLD B. GORMAN & W. HARRY
STEELE, JR.

T/a HOTEL WILDWOOD

N/W Corner Spicer & Atlantic Aves.

Wildwood, N. J.,

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption
License C-33, issued by the Board of
Commissioners of the City of Wildwood.)

Harold B. Gorman and W. Harry Steele, Jr., Defendant-licensee, Pro Se.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendants pleaded non vult to a charge alleging that they possessed a 4/5 quart bottle of "Imperial Hiram Walker's Blended Whiskey 86 Proof", which contained an alcoholic beverage not genuine as labeled, in violation of R. S. 33:1-50.

During an inspection of the defendants' premises on August 23, 1945, an ABC agent tested thirty-two bottles of liquor which comprised their entire open stock, and seized the bottle in question. Analysis by the ABC chemist verified the agent's suspicion that the contents of the bottle contained whiskey other than that called for by the label.

The record discloses that the responsibility for the "refill" apparently rests with an unfaithful employee whose association with the defendant was immediately severed following the seizure in question. Nonetheless, in cases too numerous to require citation, it has been held that a licensee is strictly accountable for the alcoholic beverages found on his licensed premises. Under the circumstances, the defendants' license must be suspended for a minimum period of fifteen (15) days. Cf. Re Rudolph, Bulletin 680, Item 1.

The records of this Department indicate that defendants' premises are now closed and will remain closed until some time in the Spring. Thus, no effective suspension can be imposed at the present time. The starting date of the suspension herein will be postponed until my further order, after the licensed premises shall have reopened for business in the Spring of 1946. Re Solomon, Bulletin 586, Item 2.

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

ORDERED, that Plenary Retail Consumption License C-33, issued by the Board of Commissioners of the City of Wildwood to Harold B. Gorman and W. Harry Steele, Jr., t/a Hotel Wildwood, for premises on N/W Corner Spicer and Atlantic Avenues, Wildwood, be and the same is hereby suspended for fifteen (15) days, the time to be fixed by subsequent order as aforesaid.

ALFRED E. DRISCOLL
Commissioner.

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary
Proceedings against

CLARENCE MESSIAH NURSE
T/a TIMBUKTU
1606-08 Arctic Avenue
Atlantic City, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-231 issued by the)
Board of Commissioners of the)
City of Atlantic City.)
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Clarence Messiah Nurse, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to a charge alleging that he pos-
sessed two 4/5 quart bottles labeled "Canadian Club Blended Canadian
Whiskey", the contents of which were not genuine as labeled, in vio-
lation of R. S. 33:1-50.

On August 20, 1945 an investigator of the Department of Alco-
holic Beverage Control seized the two bottles mentioned in the charge
when preliminary tests thereof indicated that the contents were "off"
in color. Subsequent analysis by a chemist employed by the Depart-
ment of Alcoholic Beverage Control disclosed that the contents of
the seized bottles varied substantially in acids and solids from the
contents of a genuine bottle of the same product.

Defendant denies any knowledge of the violation. An examination
of his licensed premises at the time of the seizure disclosed that he
had only two sealed bottles of Canadian Club on hand, whereas he had
four cases of Harwood whiskey. The inference to be drawn from all
the circumstances is that the seized bottles have been at least par-
tially filled with Harwood whiskey.

Defendant has no previous adjudicated record. I shall suspend
defendant's license for a period of fifteen days.

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

ORDERED, that Plenary Retail Consumption License C-231, issued
by the Board of Commissioners of the City of Atlantic City to
Clarence Messiah Nurse, t/a Timbuktu, for premises 1606-08 Arctic
Avenue, Atlantic City, be and the same is hereby suspended for
fifteen (15) days, commencing at 12:01 a.m. October 23, 1945, and
terminating at 12:01 a.m. November 7, 1945.

ALFRED E. DRISCOLL
Commissioner.

8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary
Proceedings against

ANTHONY ROHE & JOHN GANIO
T/a TOWN TAVERN
2600 Pacific Avenue
Atlantic City, N. J.,

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consump-)
tion License C-52 issued by the)
Board of Commissioners of the City)
of Atlantic City.)
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Anthony Rohe and John Ganio, Defendants, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendants pleaded non vult to a charge alleging that they pos-
sessed one 4/5 quart bottle labeled "Canadian Club Blended Canadian
Whiskey", the contents of which were not genuine as labeled, in
violation of R. S. 33:1-50.

On August 20, 1945 an investigator of the State Department of
Alcoholic Beverage Control seized the bottle mentioned in the charge
when preliminary tests thereof indicated that the contents of the
bottle were "off" in color. Subsequent analysis by the chemist
employed by the Department of Alcoholic Beverage Control disclosed
that the contents of the seized bottle varied substantially in
acids, solids and coloring from the contents of genuine bottles of
the same product.

At the time of the seizure, Anthony Rohe, one of the partners,
admitted to the agent that he had refilled the seized bottle and
stated that he did so because "I could not buy Canadian Club Whisky,
but could buy Harwood Canadian Whisky. So I poured Harwood Canadian
Whiskey in Canadian Club labeled bottles and sold it as Canadian
Club."

Anthony Rohe, one of the defendants herein, has a prior adjudi-
cated record. In December 1935 his license was suspended for a
period of seven days by the local issuing authorities on a charge
of selling alcoholic beverages while the polls were open on an
Election Day. At that time, however, the operation of the sentence
was immediately suspended. In view of the fact that this suspension
was imposed nearly ten years ago, I shall not follow the normal
practice and increase the period of suspension herein because of the
prior record. The defendants' license will be suspended for a period
of fifteen days.

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

ORDERED, that Plenary Retail Consumption License C-52, issued
by the Board of Commissioners of the City of Atlantic City to
Anthony Rohe and John Ganio, t/a Town Tavern, for premises 2600
Pacific Avenue, Atlantic City, be and the same is hereby suspended
for fifteen (15) days, commencing at 12:01 a.m. October 23, 1945, and
terminating at 12:01 a.m. November 7, 1945.

ALFRED E. DRISCOLL
Commissioner.

9. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary
Proceedings against

NORMAN PAUL WARD
T/a NORMAN'S CAFE
201 N. New Hampshire Ave.
Atlantic City, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-61 issued by the
Board of Commissioners of the
City of Atlantic City.
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Norman Paul Ward, Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded guilty to a charge alleging that he possessed one 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky", the contents of which were not genuine as labeled, in violation of R. S. 33:1-50.

On August 16, 1945 an investigator of the State Department of Alcoholic Beverage Control seized the bottle mentioned in the charge when preliminary tests indicated that the contents were "off" in color. Subsequent analysis by a chemist employed by the Department of Alcoholic Beverage Control disclosed that the contents of the seized bottle varied substantially in acids and solids from the contents of a genuine bottle of the same product. From the result of the analysis an inference may be drawn that the seized bottle had been wholly or partially filled with Harwood whiskey.

Defendant and his employees denied any knowledge of the violation. However, the licensee must be held strictly responsible for any refills found in his stock of liquor. Re Kurian, Bulletin 517, Item 2.

Defendant has no previous adjudicated record. Nevertheless I must suspend defendant's license for a period of fifteen days. Cf. Re Rudolph, Bulletin 680, Item 1.

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

ORDERED, that Plenary Retail Consumption License C-61, issued by the Board of Commissioners of the City of Atlantic City to Norman Paul Ward, t/a Norman's Cafe, for premises 201 N. New Hampshire Avenue, Atlantic City, be and the same is hereby suspended for fifteen days, commencing at 12:01 a.m. October 23, 1945, and terminating at 12:01 a.m. November 7, 1945.

ALFRED E. DRISCOLL
Commissioner.

10. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED
FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary)
Proceedings against)

CHARLES T. JOHNSON)
T/a JOHNSON'S CAFE)
S/E Cor. Burk & Atlantic Aves.)
Wildwood, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-31, issued by the)
Board of Commissioners of the)
City of Wildwood.)
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Harry Tenenbaum, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that he possessed two 4/5 quart bottles of "Canadian Club Blended Canadian Whiskey 90.4 Proof" and two 4/5 quart bottles of "Four Roses A Blend of Straight Whiskies 90 Proof", all of which bottles contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

The four bottles referred to above were part of the defendant's open stock of thirty-two various whiskey containers which were tested by an ABC agent on August 24, 1945. In a written statement made by the defendant on that date, he admitted that he had refilled the four seized bottles because of his inability to obtain the brands in question.

Since this is the defendant's first adjudicated violation, I shall suspend his license for a period of twenty days.
Cf. Re Zeidner & Cohen, Bulletin 680, Item 2.

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

ORDERED, that Plenary Retail Consumption License C-31, issued by the Board of Commissioners of the City of Wildwood to Charles T. Johnson, t/a Johnson's Cafe, for premises on S/E Corner Burk and Atlantic Avenues, Wildwood, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. October 23, 1945, and terminating at 2:00 a.m. November 12, 1945.

ALFRED E. DRISCOLL
Commissioner.

11. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary
Proceedings against

JOSEPH P. MAZZA
T/a JOE'S BAR
Oceanport Road
Oceanport, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-4 issued by the
Borough Council of the Borough
of Oceanport.

Solomon Tepper, Esq., Attorney for Defendant.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to a charge alleging that he possessed one 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky", the contents of which were not genuine as labeled, in violation of R. S. 33:1-50.

On August 30, 1945 an investigator of the Department of Alcoholic Beverage Control seized the bottle mentioned in the charge when preliminary tests indicated that the contents of the bottle were not genuine as labeled. Subsequent analysis by a chemist employed by the Department of Alcoholic Beverage Control disclosed that the contents of the seized bottle varied substantially in acids and solids from the contents of a genuine bottle of the same product.

At the time of the seizure defendant verbally admitted to the agent that he had refilled the seized bottle with Harwood whiskey. In a written statement given to the agent, defendant said:

"I could not get sufficient Canadian Club Whiskey to meet the demand. So as I was told Harwood Canadian Whiskey was the same I poured the contents of a Harwood Canadian Whiskey in a bottle bearing Canadian Club Whiskey label."

As repeatedly pointed out, a patron is entitled to receive exactly what he orders. Retailers are not permitted to refill bottles. Re Leda, Inc., Bulletin 678, Item 1.

Defendant has no previous adjudicated record, although in 1937 he received a warning letter from the Department. I shall suspend defendant's license for a period of fifteen days.

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

ORDERED, that Plenary Retail Consumption License C-4, issued by the Borough Council of the Borough of Oceanport to Joseph P. Mazza, t/a Joe's Bar, for premises on Oceanport Road, Oceanport, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. October 23, 1945, and terminating at 2:00 a.m. November 7, 1945.

ALFRED E. DRISCOLL
Commissioner.

12. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED
FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary
Proceedings against

CATHERINE DELANEY
T/a DELANEY'S CAFE
N. W. Cor. Baker & Atlantic Aves.
Wildwood, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-14, issued by the Board of
Commissioners of the City of
Wildwood.

A. J. Cafiero, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that she possessed two 4/5 quart bottles of "Paul Jones Rye XXXX A Blend of Straight Whiskies 90 Proof", which contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

The two bottles in question were removed from the licensed premises by an ABC agent on August 23, 1945, after he had tested the sixteen open bottles of liquor on the defendant's back bar.

The fact that the violation may have resulted from the tamperings of a bartender does not relieve the defendant from her complete responsibility for the condition of her liquor stock.

This is the first time the defendant has been cited in disciplinary proceedings. The license will be suspended for a period of fifteen days. Cf. Re Rudolph, Bulletin 680, Item 1.

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

ORDERED, that Plenary Retail Consumption License C-14, issued by the Board of Commissioners of the City of Wildwood to Catherine Delaney, t/a Delaney's Cafe, for premises on N. W. Corner of Baker and Atlantic Avenues, Wildwood, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. October 23, 1945, and terminating at 2:00 a.m. November 7, 1945.

ALFRED E. DRISCOLL
Commissioner.

13. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES FOR CONSUMPTION OFF THE LICENSED PREMISES IN OTHER THAN ORIGINAL CONTAINERS, IN VIOLATION OF R. S. 33:1-2 - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

JOSEPH WACKAR

T/a WHITE HOUSE

Seabrook Ave. & Wilson Ave.

Middletown Township

P.O. Port Monmouth, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-16 issued by the Township Committee of the Township of Middletown.

William C. Egan, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleads non vult to a charge alleging that he sold alcoholic beverages for off-premises consumption in other than original containers, in violation of R. S. 33:1-2.

On the evening of September 5, 1945, at about 10:20 p.m., agents of the Department of Alcoholic Beverage Control who were outside the licensed premises observed a man enter the premises and leave in a few minutes with a cardboard container. When approached by the agents he readily admitted that the package contained wine that he had purchased from the licensee. The licensee admitted the sale and stated that he had told the customer that he could not sell him any bottled goods as it was after 10:00 p.m. but he (the licensee) could open a bottle and sell him the contents thereof which could be poured into a container and removed from the premises in that manner.

The licensee's refusal to sell in original containers was undoubtedly prompted by his knowledge that State Regulations No. 38 prohibited the sale and delivery of any alcoholic beverage at retail in original containers for consumption off the licensed premises on Sunday, or before 9:00 a.m. or after 10:00 p.m. on any other day of the week. The licensee should have been equally mindful that under the terms of his license he was prohibited from (1) bottling and (2) selling alcoholic beverages for off-premises consumption in other than original containers. (R. S. 33:1-2). The single exception to the foregoing recognizes the time-honored practice of "rushing the growler", whereby licensees, under certain limited circumstances, are permitted to sell beer in pitchers and pails for off-premises consumption.

It is apparent that the licensee, in his effort to circumvent the letter and spirit of State Regulations No. 38, ran afoul of other and equally important provisions in the Law. R. S. 33:1-2; R. S. 33:1-12.

WACKAR 1-100

The licensee's explanation and assertion that it was the result of his misunderstanding of State Regulations No. 38 is hardly credible in view of his previous record. On June 25, 1945, the defendant's license was suspended for five days by the local issuing authority for violation of State Regulations No. 38. Under the circumstances, I am compelled to suspend the defendant's license for thirty days, less five for the plea, making a net suspension of twenty-five days.

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

ORDERED, that Plenary Retail Consumption License C-16, issued by the Township Committee of the Township of Middletown to Joseph Wackar, t/a White House, for premises at Seabrook Ave. & Wilson Ave., Middletown Township, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. October 22, 1945, and terminating at 2:00 a.m. November 16, 1945.

ALFRED E. DRISCOLL
Commissioner.

14. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary
Proceedings against

PAUL LANN A
744 Lafayette St.
Cape May, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-4, issued by the
Board of Commissioners of the
City of Cape May.
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A. J. Caffiero, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that he possessed a 4/5 quart bottle of "Canadian Club Blended Canadian Whiskey 90.4 Proof", which contained an alcoholic beverage not genuine as labeled, in violation of R. S. 33:1-50.

The defendant admitted to an ABC agent on August 24, 1945 that he had refilled the bottle in question with Harwood whiskey because of his inability to obtain any Canadian Club whiskey. I shall impose a fifteen-day penalty. Cf. Re Rudolph, Bulletin 680, Item 1.

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

ORDERED, that Plenary Retail Consumption License C-4, issued by the Board of Commissioners of the City of Cape May to Paul Lanna, for premises 744 Lafayette Street, Cape May, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 1:00 a.m. October 23, 1945, and terminating at 1:00 a.m. November 7, 1945.

Alfred E. Driscoll
Commissioner.