

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

BULLETIN 742

DECEMBER 27, 1946.

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

BULLETIN 742

DECEMBER 27, 1946.

1. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

BOULEVARD TAVERN, INC.  
T/a GRIFFIN'S  
6001 Boulevard East  
West New York, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-71, issued by the Board of Commissioners of the Town of West New York.

Benedict A. Beronio, Esc., Attorney for Defendant-licensee.  
Anthony Meyer, Jr., Esc., appearing for Department of Alcoholic Beverage Control.

The defendant pleaded non vult to a charge alleging that, on September 17, 1946, it possessed four 4/5 quart bottles of "White Label Blended Scotch Whisky", all of which bottles contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

Despite the personal innocence of the officers of the corporate defendant, the licensee must, nevertheless, be held responsible for the "refills" possessed on its licensed premises. Re Kurian, Bulletin 517, Item 2.

The defendant's previous record includes a ten-day suspension, imposed in October, 1938, for selling alcoholic beverages and being open during prohibited hours. See Bulletin 272, Item 14. Because of the intervening lapse of more than seven years and the dissimilarity in the violations, the previous offense will not be considered in a determination of the proper penalty to be imposed for the instant violation.

The license will be suspended for a period of twenty days. Five days is remitted for the plea, leaving a net suspension of fifteen days. Cf. Re Johnson, Bulletin 710, Item 11; Re Gelb, Bulletin 741, Item 8.

Accordingly, it is, on this 18th day of December, 1946,

ORDERED that Plenary Retail Consumption License C-71, issued by the Board of Commissioners of the Town of West New York to Boulevard Tavern, Inc., t/a Griffin's, for premises 6001 Boulevard East, West New York, be and the same is hereby suspended for a period of fifteen (15) days. Pursuant to notice of August 23, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK  
Deputy Commissioner.

2. APPELLATE DECISIONS - LUKER v. SOUTH RIVER.

ALFRED LUKER, JR., )  
Appellant, )

-vs- )

BOROUGH COUNCIL OF THE )  
BOROUGH OF SOUTH RIVER, )  
Respondent )

ON APPEAL  
CONCLUSIONS AND ORDERS

----- )  
George L. Burton, Esq., by Baruch L. Seidman, Esq., Attorney for )  
Appellant. )  
Stanley S. Dickerson, Esq., Attorney for Respondent. )

This is an appeal from the respondent's refusal to renew the appellant's plenary retail consumption license for the present licensing year for premises 26 Reid Street, South River.

Alfred Luker, Sr., father of the appellant, was the licensee at the premises in question from September 12, 1939 to June 11, 1946, when the license was transferred by the respondent to his son, the present appellant. Less than three weeks later, to wit, on June 29, 1946, the respondent denied appellant's renewal application.

Several reasons are assigned by the respondent in support of its action but, in my opinion, none of them is sufficient to warrant a refusal to renew the privileges of the license transferred to the appellant only eighteen days prior thereto.

The respondent first alleges that the father had suffered two suspensions of his license, one in 1940 and the other in 1943, and had also received a warning in May, 1946 concerning the sale of alcoholic beverages to minors. While this record of misconduct may have justified, in the exercise of a sound discretion, a refusal to transfer the license, and to deny thereafter a renewal to the father, it would be manifestly unfair, under the existing circumstances, to visit the sins of the father upon the son, who is entirely innocent of any of the cited wrongdoing. There is nothing in the record to connect the appellant, even in the slightest degree, with any of the past infractions committed by the former licensee. This ground must be held invalid.

The respondent next asserts that, when it voted to deny the renewal application, an action for dispossession from the licensed premises was pending against the father in the local District Court. Apparently the respondent was of the opinion that such litigation resulted in a loss by the father of the right to possession of the licensed premises. The fact is, however, that the appellant was in possession of the licensed premises by assignment from his father ever since the transfer on June 11, 1946 and, indeed, the dispossession proceedings resulted in a judgment in the father's favor on September 14, 1946. Whatever may have been the differences between the landlord and the father with respect to the right to possession of the licensed premises, it is undisputed that the appellant has been in actual possession ever since June 11, 1946, and the pending dispossession proceedings did not operate to deprive the appellant of the right to possession of the licensed premises.

Basically, it seems that the respondent is dissatisfied with the manner of operation of the tavern. It was hoped that the appellant would devote his full time and attention to the tavern and that the father would entirely disassociate himself from any duties there. However, the appellant, who returned to his prior factory job after being discharged from military service in January, 1946, spent only evenings at the tavern, and during the day the premises were conducted by his father and mother. Had the respondent indicated to the appellant, when the license was transferred to him on June 11, 1946, that he was to forego his other employment and that the father was not to have any further connection with the licensed premises, the issue would then have arisen whether the denial of renewal was predicated upon a valid ground. No such issue is herein presented, however, since it is admitted that no prior notice to that effect was ever given to the appellant.

The appellant testified that he had continued his outside employment because of the pendency of the dispossess proceedings, which have since terminated favorably to his interests, and also because he was awaiting the outcome of the instant appeal. The appellant would now be well advised to devote his energies exclusively to the operation of the tavern and accede to the desire of the respondent that he dispense with the services of his father at the licensed premises. In this way he will eliminate such issue, the validity of which is not now passed upon, from any consideration by the respondent in connection with any future applications by the appellant for renewal of his license.

The action of respondent is reversed.

Accordingly, it is, on this 18th day of December, 1946,

ORDERED that respondent's action in denying appellant's application for renewal of his plenary retail consumption license be and the same is hereby reversed; and respondent is directed to issue forthwith the license for this licensing year as applied for by the appellant; and it is further

ORDERED that the term of Plenary Retail Consumption License C-2 held by appellant for the licensing year 1945-46, heretofore extended during the pendency of these proceedings by Order dated July 1, 1946, be and the same is hereby further extended until the issuance by respondent of appellant's renewal license.

ERWIN B. HOCK  
Deputy Commissioner.

3. APPELLATE DECISIONS - KOZAR v. NEW BRUNSWICK AND TOTH.

ROSE KOZAR, individually and as )  
Administratrix of the Estate of )  
Steve Kozar, )

Appellant, )

-vs-

ON APPEAL  
CONCLUSIONS AND ORDER

BOARD OF COMMISSIONERS OF THE )  
CITY OF NEW BRUNSWICK, and PAUL )  
TOTH, t/a CRYSTAL CAFE, )

Respondents )

Alex Eber, Esq., Attorney for Appellant.  
Paul W. Ewing, Esq., Attorney for Respondent Board of Commissioners.  
Morris Spritzer, Esq., Attorney for Respondent Paul Toth.

Appellant appeals from the action of respondent Board of Commissioners of the City of New Brunswick in granting a renewal for the fiscal year 1946-47 of the plenary retail consumption license held by respondent Paul Toth.

Appellant and her deceased husband owned premises 268 Somerset Street, at which location appellant's husband, Steve Kozar, formerly operated a business under a plenary retail consumption license. Early in 1944, Steve Kozar, feeling unwell, transferred the business to respondent Toth and consented, in writing, to a transfer of the license. The transfer was duly granted by respondent Board of Commissioners. On May 9, 1944, appellant and her now deceased husband entered into a lease with respondent Toth whereby they leased the premises 268 Somerset Street to him for a term of two years expiring on June 1, 1946.

Shortly prior to June 1, 1946, respondent Toth filed with respondent Board an application to transfer his license from 268 Somerset Street to 266 Somerset Street. Appellant objected to the transfer, particularly on the theory that the license belonged to her either individually or in her administrative capacity and, additionally, that Toth had committed a fraud on the local issuing authority in his first application made in 1944 in failing to disclose an alleged future or contingent interest of appellant's decedent by answering "No" to Question 30 on said application, 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?" A hearing was held by respondent Board upon appellant's objection to the transfer of the license and a complete stenographic report of said hearing was prepared. As a result of the hearing, the license was transferred by respondent Board from 268 Somerset Street to 266 Somerset Street. On application for a renewal of said license appellant again objected, and it was stipulated that appellant would raise the same objection thereto as had been raised on the application for transfer and that any hearing would produce the same testimony already before the local issuing authority. The license was renewed and appellant filed this appeal.

Counsel for the parties to said appeal agreed, by stipulation, to present this appeal upon the stenographic transcript of the hearing held by the local issuing authority, as provided by Regulations No. 15, Rule 8.

There is considerable testimony respecting an alleged retained interest in the license, it being contended by appellant that in 1944 there was a separate agreement between her deceased husband and Toth

to the effect that the license would be returned to Steve Kozar at the expiration of the term of the lease. No objection was raised either to the transfer or to the renewal except in relation to the "ownership" of the license or an interest therein. Thus, the real issue before me and before the local issuing authority was, and is, who is the "owner" of the license.

Agreements whereby a person other than the licensee obtains an interest in a liquor license appear to be absolutely illegal, or at least unenforceable. R. S. 33:1-26. See Novack v. Krauz, 138 N. J. Eq. 241; Walsh v. Bradley, 121 N. J. Eq. 359; Lachow v. Alper, 130 N. J. Eq. 588; Voight v. Board of Excise, 59 N. J. L. 353.

Even if we should determine the issue upon the existence or non-existence of the alleged agreement, the testimony, while in some respects irreconcilable, is sufficient to warrant a finding that no definite agreement was in fact made. It further appears that, prior to the transfer, Steve Kozar was advised by his then attorney that such an agreement was illegal.

As to the second ground presented for reversal, namely, the alleged fraud committed by respondent Toth, there would appear to be sufficient evidence to warrant the finding of the local issuing authority that no fraud had been committed.

Since no valid reason appears why the license held by Toth should not have been renewed, the action of respondent Board is affirmed.

Accordingly, it is, on this 19th day of December, 1946,

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

ERWIN B. HOCK  
Deputy Commissioner.

4. DISCIPLINARY PROCEEDINGS - FALSE STATEMENTS IN LICENSE APPLICATIONS CONCEALING MATERIAL FACTS - SALE OF ALCOHOLIC BEVERAGES TO PERSONS ACTUALLY OR APPARENTLY INTOXICATED - SALE OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION DURING PROHIBITED HOURS - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS.

In the Matter of Disciplinary Proceedings against )

ANTHONY GIORDANO )  
T/a GIG'S )  
34 Montgomery Street )  
Jersey City 2, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-22 for the fiscal year 1942-43, renewed annually thereafter to and including the current (1946-47) fiscal year; all issued by the Board of Commissioners of the City of Jersey City. )

Carey and Lane, Esqs., by Robert Carey and Harry Lane, Esqs., and Martin J. Loftus, Esq., Attorneys for Defendant-licensee. Harry Castelbaum, Esq. and Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

Defendant pleaded not guilty to charges alleging (1) that, in violation of R. S. 33:1-25, he falsified his applications for license for his several premises for the fiscal year 1941-42 by denying convictions of crime; (2) that, in violation of R. S. 33:1-25, he falsified said applications by denying therein that he had ever suffered a license suspension; (3) that on November 13, 1942, he sold alcoholic beverages to persons actually or apparently intoxicated, in violation of Rule 1 of State Regulations No. 20; and (4) that he sold alcoholic beverages in original containers for off-premises consumption on Sunday, April 28, 1946, in violation of Rule 1 of State Regulations No. 38.

As to the first charge: In 1919, defendant, on plea of guilty, was convicted of the crime of possessing stolen goods. It has been determined collaterally that this conviction, under the circumstances of the case, did not involve moral turpitude and hence does not disqualify defendant from holding a liquor license. Re Case No. 194, Bulletin 577, Item 6. Defendant testified herein that he had failed to disclose this conviction because he believed that, in order to constitute a conviction of a crime, a person must be found guilty by a jury, whereas he had pleaded guilty to the indictment. The explanation carries little weight, especially in view of the fact that defendant spent ten months in jail as a result of the conviction. The conviction should have been disclosed. I find the defendant guilty of the first charge.

As to the second charge: It appears that in December, 1936, defendant had suffered a two-day suspension of his license for premises at 223 Mallory Avenue, Jersey City; in December, 1937, a two-day suspension of his license for premises at 364 - 1st Street, Jersey City; and in November, 1939, a five-day suspension of his license for premises at 34-36 Montgomery Street, Jersey City. None of these was mentioned in his applications. In explanation, defendant testified that he thought only revocations required disclosure (notwithstanding the use of the word "suspension" in the question) and, further, that he was confused by another question and, finally, that "it could be a pure mistake". I find defendant guilty of the second charge.

As to the third charge: Shortly before 1:00 p.m. on November 13, 1942, while one ABC agent remained outside the defendant's tavern at 34-36 Montgomery Street, Jersey City, another agent entered and observed two men, Leo --- and Fred ---, standing at one end of the bar, both of whom appeared to be intoxicated. They were boisterous and unsteady on their feet. Leo threw some change on the bar and ordered a bottle of wine from the bartender, who wrapped the bottle in a paper bag and placed it on the bar. Fred picked up the package and staggered out of the tavern, followed shortly thereafter by Leo.

The agent, who had remained outside, saw Leo and Fred leave the tavern. He testified that "they couldn't walk a straight line. They were zig-zagging along the sidewalk". They disappeared around the corner and returned several minutes later, without the package, and "definitely drunker". They reentered the tavern and emerged in a little while. This time Leo was carrying a paper bag which was subsequently found to contain two bottles of wine and a bottle of whiskey. Leo and Fred then became involved in a fight with several persons standing near the tavern, as a result of which a police officer appeared and quelled the disturbance. About a half-hour later, a local detective arrived at the tavern and aided the agents in taking statements from Leo and the bartender.

In the bartender's statement, introduced into evidence, he admits, with respect to the bottle of wine sold in the agent's presence, that Leo paid for it, but that he delivered the bag to Fred because "he (Fred) was sober". Concerning the second package containing the three bottles of liquor, the bartender states that they were purchased early that morning and "when he (Leo) came in for the package I did not want to give it to him because he was intoxicated but he kept on arguing and raising a disturbance that I finally gave it to him so he would go out and go home".

Neither the police officer nor the detective was of the opinion that Leo was intoxicated. However, while the former testified that he "seemed all right to me", the detective stated, "I would say that the man had been drinking". It may possibly be that the excitement resulting from the fracas that took place outside the tavern had a sobering effect upon Leo's condition. In any event, the straightforward testimony given by both ABC agents, corroborated in part by the bartender, convinces me that Leo, if not also Fred, was intoxicated when the second package containing two bottles of wine and a bottle of whiskey was delivered to him. The evidence convincingly proves a violation of the pertinent regulation which interdicts not only the sale and service of alcoholic beverages to any intoxicated person, but the delivery thereof as well. See Rule 1 of State Regulations No. 20. I find defendant guilty of the third charge.

As to the fourth charge: The testimony discloses that on Sunday, April 28, 1946, at approximately 9:00 p.m., a large number of soldiers visited defendant's licensed premises. These servicemen had just arrived from overseas and were awaiting transportation to a

separation center. Several of the soldiers testified that they purchased bottles of whiskey for off-premises consumption from Vincent DeGeronimo, the bartender in charge that evening. Vincent DeGeronimo admitted that he did sell several bottles of liquor to the soldiers, but claims he did so because of being intimidated by them and in fear of bodily harm and damage to the business establishment. He further admitted that he made no effort to communicate with the police authorities even though there was a telephone in the licensed premises.

Defendant testified that he was not in the licensed premises on the occasion in question. However, even though the licensee was not present at the time the violation was committed, he is nevertheless fully responsible for any illegal acts committed on his licensed premises by his employees. Re Kneller, Bulletin 49, Item 4. I find the defendant guilty of the fourth charge.

Although the defendant has a previous record mentioned in connection with the second charge, seven years have elapsed since the date of the last suspension and, hence, that past record will not be considered in fixing the penalty herein. Likewise, although the first and second charges preferred were directed to all of defendant's licenses by reason of the misstatements, no independent suspension will be imposed with respect to defendant's other premises since thereby the penalty would be magnified out of all proportion to the offense. Under all of the circumstances, I shall suspend defendant's license for the premises mentioned above for a total of thirty (30) days.

Accordingly, it is, on this 19th day of December, 1946,

ORDERED that Plenary Retail Consumption License C-22, issued by the Board of Commissioners of the City of Jersey City to Anthony Giordano, t/a Gig's, for premises 34 Montgomery Street, Jersey City, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 a.m. January 6, 1947, and terminating at 2:00 a.m. February 5, 1947.

ERWIN B. HOCK  
Deputy Commissioner.

5. DISCIPLINARY PROCEEDINGS - PERMITTING MINOR, HOLDER OF EMPLOYMENT PERMIT, TO SELL ALCOHOLIC BEVERAGES - SALE OF ALCOHOLIC BEVERAGES TO MINORS - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS, LESS 5 FOR PLEA.

DISCIPLINARY PROCEEDINGS - SALE AND SERVICE BY MINOR PERMITTEE CONTRARY TO CONDITIONS OF EMPLOYMENT PERMIT - PERMIT PRIVILEGE SUSPENDED FOR BALANCE OF TERM.

In the Matter of Disciplinary Proceedings against )

LEO J. RAYWOOD )  
T/a RAYWOOD'S TAVERN )  
Washington Crossing-Pennington Rd. )  
Hopewell Township )  
P.O. R.F.D. Titusville, N. J., )

Holder of Plenary Retail Consumption License C-10 issued by the Township Committee of the Township of Hopewell. )  
----- )

CONCLUSIONS AND ORDER

In the Matter of Disciplinary Proceedings against )

PANSY M. JOHNS )  
Pennington Rd., R.D. 1 )  
Titusville, N. J., )

Holder of Employment Permit No. 735 issued by the State Commissioner of Alcoholic Beverage Control. )  
----- )

Leo J. Raywood, Defendant-licensee, Pro Se.  
Pansy M. Johns, Defendant-permittee, Pro Se.  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant-licensee has pleaded non vult to charges alleging that:

- (1) On October 23 and October 24, 1946, he knowingly employed a minor, Pansy M. Johns, to sell and serve alcoholic beverages, in violation of R. S. 33:1-26 and Rule 2 of State Regulations No. 13;
- (2) On October 26, 1946, he sold alcoholic beverages to a minor, in violation of R. S. 33:1-77; and
- (3) On October 26, 1946, he permitted the service and delivery of alcoholic beverages to a minor and permitted the minor to consume alcoholic beverages on his licensed premises, in violation of Rule 1 of State Regulations No. 20.

Pansy M. Johns, the permittee, has also pleaded non vult to a charge of selling and serving alcoholic beverages, contrary to the conditions upon which her employment permit was issued.

Both proceedings are being decided herewith.

Agents of the Department of Alcoholic Beverage Control visited the defendant's premises on October 23, 1946, and October 24, 1946. On both occasions they observed Pansy M. Johns serve beer to patrons. At that time Pansy M. Johns was eighteen years of age and, hence, was ineligible to sell or serve alcoholic beverages.

On October 26, 1946 ABC agents observed a girl, who appeared to be a minor, seated with her male escort at a table in the service room of defendant's premises. The male escort purchased several rounds of drinks from the bartender and carried them to the table, where they were consumed by the girl and himself. Subsequent investigation disclosed that the girl was seventeen years of age.

Defendant-licensee has no prior adjudicated record. Under the circumstances I shall suspend his license for a period of five days because of the violation set forth in charge (1). Re Weisser, Bulletin 705, Item 6. Since the minor was only seventeen years of age, I shall suspend his license for an additional period of fifteen days because of the violations set forth in charges (2) and (3) herein. Re Sirvent, Bulletin 634, Item 9. Five days will be remitted because of the plea entered herein, leaving a net suspension of fifteen days.

I shall suspend the employment permit held by defendant-permittee for the balance of its term.

Accordingly, it is, on this 19th day of December, 1946,

ORDERED that Plenary Retail Consumption License C-10, issued by the Township Committee of the Township of Hopewell to Leo J. Raywood, t/a Raywood's Tavern, for premises at Washington Crossing-Pennington Road, Hopewell Township, be and the same is hereby suspended for fifteen days, commencing at 2:30 a.m. January 6, 1947, and terminating at 2:30 a.m. January 21, 1947; and it is further

ORDERED that Employment Permit No. 735, issued by the State Commissioner of Alcoholic Beverage Control to Pansy M. Johns, Pennington Road, R.D. 1, Titusville, be and the same is hereby suspended for the balance of its term, effective immediately.

ERWIN B. HOCK  
Deputy Commissioner.

6. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS.

In the Matter of Disciplinary Proceedings against )  
 MRS. ETHEL BENSON )  
 T/a BENSON'S TAVERN )  
 Route 23, Sussex-High Point Road )  
 Wantage, N. J., )  
 Holder of Plenary Retail Consumption License C-7 for the fiscal years 1945-46 and 1946-47, issued by the Township Committee of the Township of Wantage, and transferred during the pendency of these proceedings to )  
 ETHEL BENSON and DAVID BENSON )  
 T/a BENSON'S TAVERN, )  
 for the same premises. )  
 ----- )

CONCLUSIONS AND ORDER

Mrs. Ethel Benson, Defendant-licensee, Pro Se.  
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant pleads non vult to the following charges:

"1. In your application filed with the Township Committee of Wantage Township and upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question 30, which asked: 'Has any individual... other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?', whereas in truth and fact David Benson had such an interest in that he was co-owner with you of the said business; such false statement being in violation of R. S. 33:1-25.

"2. From April 1, 1935 until the present time, you knowingly aided and abetted David Benson to exercise, contrary to R. S. 33:1-26, the rights and privileges of your plenary retail consumption license, thereby yourself violating R. S. 33:1-52."

David Benson is the husband of the licensee. The licensee states that when she first made her application for a license, the Township Clerk suggested that she answer Question No. 30 "No", stating to her, "There is nobody only you and Dave, the same as any married couple going into business." Accordingly, she states that all subsequent applications were made in the same manner.

Undoubtedly, the husband was for many years co-owner of the business. Everything was operated jointly. There was one bank account and all bills, except those paid by cash, were paid out of that bank account and every transaction was handled by them jointly.

Although the failure to disclose the interest of David Benson in the license may have been due to the fact that in 1926 he was convicted of a crime, this was denied by both defendant and her husband. In any event, it has been ruled in another proceeding that the crime of which David Benson has been convicted does not involve moral turpitude.

Re Eligibility Case No. 585. Furthermore, the license has recently been transferred to their joint names, thus correcting the illegal situation. Under all the circumstances of this case, I shall suspend the license for a period of thirty days. Hereafter, in the absence of aggravating circumstances, the minimum period of suspension will be thirty days in cases where the person for whom the "front" was created has been convicted of a crime but has obtained an order removing his statutory disqualification or a ruling that the crime did not involve moral turpitude.

Although this proceeding was instituted during the 1945-46 licensing period, it does not abate but remains fully effective against the renewal license for the fiscal year 1946-47. State Regulations No. 16.

Accordingly, it is, on this 19th day of December, 1946,

ORDERED that Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Wantage to Mrs. Ethel Benson, and transferred to Ethel Benson and David Benson, t/a Benson's Tavern, for premises on Route 23, Sussex-High Point Road, Wantage, be and the same is hereby suspended for thirty (30) days, commencing at 3:00 a.m. January 6, 1947, and terminating at 3:00 a.m. February 5, 1947.

ERWIN B. HOCK  
Deputy Commissioner.

7. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES PURCHASED BY ONE RETAILER FROM ANOTHER AND TRANSPORTED UNLAWFULLY ORDERED FORFEITED - MOTOR VEHICLE USED IN SUCH TRANSPORTATION RETURNED TO OWNER WHO ESTABLISHED THAT HE UNKNOWINGLY VIOLATED THE LAW.

In the Matter of the Seizure on August 14, 1946 of 14 - 4/5 quart bottles of Harwood Whiskey, 3 - 4/5 quart bottles of Canadian Club Whisky, and a Dodge Coupe, at 410-412 Boulevard, in the Borough of Seaside Heights, County of Ocean and State of New Jersey. ) Case No. 7029 ) ON HEARING ) CONCLUSIONS AND ORDER

Edward F. Beers, Esq., Attorney for Thomas Gianatos.  
Harry Castelbaum, Esq., appearing for the Department of Alcoholic Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic beverages and a Dodge Coupe, described in a schedule attached hereto, seized at 410-412 Boulevard, Seaside Heights, New Jersey, constitute unlawful property and should be forfeited.

Thomas Gianatos, holder of a plenary retail consumption license for the above premises, purchased part of the alcoholic beverages in question from one retailer, and part from another retailer. It is unlawful for him to purchase alcoholic beverages from any person other than the holder of a New Jersey Manufacturer's or Wholesaler's license, except pursuant to a Special Permit obtained from the State Department of Alcoholic Beverage Control. State Regulations No. 20, Rule 15.

Gianatos transported these unlawfully purchased alcoholic beverages to his licensed premises in the Dodge Coupe. On August 14, 1946 ABC agents seized this car and the alcoholic beverages therein, the car being then parked at the licensed premises.

Gianatos did not have a transportation license as required by R. S. 33:1-13 nor did he, as a liquor licensee, obtain a transit insignia from this Department, as provided for by R.S. 33:1-28 and State Regulations No. 17, authorizing the use of such Dodge Coupe in the transportation of alcoholic beverages.

The alcoholic beverages transported in the aforesaid unlicensed Dodge Coupe are illicit. R. S. 33:1-1(i). Illicit alcoholic beverages and the vehicle in which they are transported constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(y), R. S. 33:1-66. Such alcoholic beverages likewise constitute unlawful property and are subject to forfeiture under the provisions of R. S. 33:1-66(c), because Gianatos purchased them in violation of the aforesaid State Regulations.

Pending seizure hearing in the matter, the Dodge Coupe was returned to Thomas Gianatos upon payment under protest, pursuant to R. S. 33:1-66, of its appraised retail value of \$850.00. Gianatos has stipulated that the State Commissioner of Alcoholic Beverage Control shall determine in this proceeding whether this money should be returned to him.

When the matter came on for hearing pursuant to the aforesaid stipulation, and further, pursuant to R. S. 33:1-66, Thomas Gianatos appeared with counsel and sought return of the aforesaid sum of \$850.00. He also indicated a desire for the return, if possible, of the alcoholic beverages.

Under R. S. 33:1-66(e) I have the discretionary authority to return property subject to forfeiture to a person who has established to my satisfaction that he acted in good faith and unknowingly violated the law.

The alcoholic beverages sold to Gianatos by the other retailers were legitimate in origin, although Gianatos admits that he knew that he was not permitted to purchase them from such retailers for resale at his licensed premises. Although Gianatos claims that he purchased the alcoholic beverages for his own use, the weight of evidence is that the alcoholic beverages, scarce brands, were intended for use in his licensed premises.

In any event, even the purchase of such alcoholic beverages for use in his tavern would merely be a case of a retailer seeking to replenish his stock of liquor, in times of shortage, by purchase from other retailers.

Gianatos appears to have been unaware that it was unlawful to transport alcoholic beverages in a vehicle not licensed for that purpose.

I have heretofore ruled that under such circumstances the purchasing retailer should be considered as an unwitting violator of the law. See Seizure Case No. 7011, Bulletin 738, Item 5, wherein the reasons therefor are fully expressed.

In seizure proceedings, an unwitting violator may obtain remission of forfeiture. Since I have concluded that Gianatos unknowingly violated the law in so far as the transportation of alcoholic beverages in question is concerned, the \$850.00 which he deposited will be returned to him conditioned upon his obtaining a validating permit to cover the unlawful transportation of the alcoholic beverages, and further, conditioned upon the payment of the cost of seizure and storage.

It is obvious that no validating permit with respect to the purchase of the alcoholic beverages will be issued, since these purchases were the basis, in part, for the disciplinary proceedings brought against the license which Gianatos holds. That offense, therefore, will be merged in the penalty in such proceedings. These purchases not being validated, the alcoholic beverages cannot be returned.

Accordingly, it is DETERMINED and ORDERED that the requisite permit fee, and the costs due, paid or incurred in connection with the seizure and the storage of the Dodge Coupe, be deducted from the \$850.00 paid by Thomas Gianatos and the balance thereof is to be returned to him; and it is further

DETERMINED and ORDERED that the seized alcoholic beverages, described in Schedule "A" attached hereto, constitute unlawful property, and the same be and hereby is forfeited in accordance with provisions of R. S. 33:1-66, and that such beverages be sold, in whole or in part, at public sale for the use of the State, subject to rules and regulations governing such sale, or be destroyed or retained for the use of hospitals and State, county and municipal institutions, whichever the State Commissioner of Alcoholic Beverage Control may hereafter determine to be for the best interest of the State.

ERWIN B. HOCK  
Deputy Commissioner.

Dated: December 20, 1946.

SCHEDULE "A"

- 14 - 4/5 quart bottles of Harwood Whisky
- 3 - 4/5 quart bottles of Canadian Club Whisky.

8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR A PERIOD OF 60 DAYS.

In the Matter of Disciplinary Proceedings against )

JAMES J. TUMULTY )  
316 North Avenue )  
Dunellen, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Mayor and Council of the Borough of Dunellen. )

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James J. Tumulty, Defendant-licensee, Pro Se.  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded non vult to a charge that he possessed illicit alcoholic beverages at his licensed premises, in violation of R. S. 33:1-50.

On October 9, 1946, an investigator of the State Department of Alcoholic Beverage Control seized two 4/5 quart bottles of "Grant's Blended Scotch Whisky", two 4/5 quart bottles of "White Label Blended Scotch Whisky", one 4/5 quart bottle of "Teacher's Highland Cream Perfection of Blended Scotch Whisky", four 4/5 quart bottles of "Haig & Haig Five Star Liqueur Blended Scots Whisky", two 4/5 quart bottles of "The Blended Scotch Whisky of the White Horse Cellar", one 4/5 quart bottle labeled "Liqueur Blended Scotch Whisky Vat 69", and one 4/5 quart bottle of "Ballantine's Liqueur Blended Scotch Whisky", when his field tests disclosed that the contents of each of said thirteen bottles were not genuine as labeled. Defendant, at the time of seizure and also when entering his plea, claimed that he personally had not tampered with the contents of the bottles and had no personal knowledge of such tampering.

Subsequently, an analysis by the Department chemist disclosed that the contents of said bottles did not at all "match" genuine Scotch whisky of like brand and label. The seized bottles contained an alcoholic beverage lower in acid content and ten or more times "heavier" in "solids" than in any genuine "Scotch" of like brand and label. I therefore must conclude that the said bottles did not contain the Scotch whisky indicated on the labels. Retailers are not permitted to refill bottles.

The contention of the defendant that he did not personally participate in and had no knowledge of the violation is no defense. Re Barrale, Bulletin 705, Item 5.

This case is seriously aggravated both by the large number of bottles involved and the fact that such bottles represent nearly all of defendant's open stock of Scotch whisky. I can only conclude therefrom that this was an attempt to profit by a fraud upon the defendant's customers.

Under the aggravating circumstances herein, and taking full cognizance of the fact that defendant has no prior adjudicated record, I shall suspend the license for sixty days. Re Gavlak, Bulletin 716, Item 7.

Accordingly, it is, on this 20th day of December, 1946,

ORDERED that Plenary Retail Consumption License C-4, issued by the Mayor and Council of the Borough of Dunellen to James J. Tumulty, for premises 316 North Avenue, Dunellen, be and the same is hereby suspended for a period of sixty (60) days. Pursuant to Notice of August 23, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK  
Deputy Commissioner.

9. STATE LICENSES - NEW APPLICATIONS FILED.

Academy Wine & Spirits Co.  
653-657 High St.  
Newark, N. J.

Application filed December 23, 1946 for transfer of Plenary Wholesale License W-23 from R. C. Williams & Company, Inc., 610 Fifth Avenue, New York, N. Y.

Diamond State Motor Freight Inc.  
East Hazedel Avenue  
Minquadale, Delaware.

Application for Transportation License filed  
December 27, 1946.

*Erwin B. Hock*  
Deputy Commissioner.