

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

BULLETIN 512

JUNE 1, 1942.

1. LICENSEES - INDUCTION INTO MILITARY SERVICE - APPLICATIONS MAY BE SIGNED BY AN ATTORNEY-IN-FACT HOLDING A POWER OF ATTORNEY - HEREIN OF THE PROCEDURE TO BE FOLLOWED IN SUCH CASES.

May 21, 1942

Elden Mills, Esq.,
Morris Township Attorney,
Morristown, N. J.

My dear Mr. Mills:

I have before me your letter of May 13th re Jerry Ladolardo, a licensee of Morris Township.

I understand that Ladolardo has been inducted into the United States Army and has by power of attorney constituted his wife Mary Ladolardo his attorney-in-fact to (1) do everything necessary in connection with his interest in the licensed business, (2) apply for renewal of the liquor license, and (3) do everything necessary to comply with municipal ordinances and State and Federal statutes applicable to the conduct of the licensed business.

No opinion is expressed as to the sufficiency or legality of the power of attorney so far as the rights of the grantor and grantee, inter sese, are concerned.

However, since the grantor, by ratifying and confirming the acts of the attorney, has assumed full responsibility, in so far as the enforcement of the Alcoholic Beverage Law is concerned, the power of attorney is unobjectionable.

It is true that R. S. 33:1-25 provides that all applications shall be duly sworn to by each of the individual applicants, but in view of the fact that the licensee will be in military service for an indefinite period and perhaps not available to sign the application, I deem it sufficient compliance with R.S. 33:1-25 if the renewal application of such a licensee is signed and sworn to by an attorney-in-fact pursuant to power of attorney expressly conferring power to make application for such renewal license, provided that the attorney is fully qualified to hold a liquor license, except as to residence.

In any application for license made by the attorney-in-fact, the application must be made and signed in the name of the grantor of the power, viz., "Jerry Ladolardo, by Mary Ladolardo, Attorney-in-fact."

Copy of the power of attorney must be attached to each application for license and any license granted upon such application should be issued to the grantor (viz., "Jerry Ladolardo, Mary Ladolardo, Attorney-in-fact"), and not to the attorney (viz., "Mary Ladolardo" or "Mary Ladolardo, Attorney-in-fact for Jerry Ladolardo").

Since Mary Ladolardo has been a resident of New Jersey for only one year, she is not disqualified thereby from acting as

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attorney-in-fact, as above indicated, but if she is to be actually employed on the licensed premises, she must first obtain a special permit authorizing such employment pursuant to R. S. 33:1-26.

Very truly yours,
ALFRED E. DRISCOLL,
Commissioner.

NOTE: The above letter was written prior to the amendment to Section 33:1-25. (Bulletin 512, Item 2). The Legislature, by its action in incorporating in the law an express provision permitting applications to be signed in behalf of applicants in military service by an attorney-in-fact holding a power of attorney in form approved by the State Commissioner of Alcoholic Beverage Control, approved the position heretofore taken by the Commissioner.

The attorney-in-fact is required to have all the qualifications of a licensee except that of residence.

2. NEW LEGISLATION - LICENSEES IN MILITARY SERVICE PERMITTED TO FILE APPLICATIONS EXECUTED IN THEIR BEHALF BY AN ATTORNEY-IN-FACT - QUALIFICATION OF APPLICANTS FOR LICENSES - AMENDMENT TO THE LAW RESPECTING CONVICTIONS.

Assembly Committee Substitute for Senate No. 245 was approved by Governor Edison on May 23, 1942, and thereupon became Chapter 249 of the Laws of 1942. It was effective immediately.

The new matter is underlined.

It reads as follows:

"AN ACT concerning alcoholic beverages, and amending section 33:1-25 of the Revised Statutes.

"1. Section 33:1-25 of the Revised Statutes is amended to read as follows:

"33:1-25. Applicants for licenses shall answer such questions and make such declarations as shall be prescribed by rules and regulations. No retail license shall be issued to a natural person unless he is a citizen of the United States and shall have been a resident of the State of New Jersey for at least five years continuously immediately prior to the submission of the application. No license of any class shall be issued to any individual who is an alien; to any person under legal age; or to any person who has been convicted of a crime involving moral turpitude or who has been twice convicted in a court of criminal jurisdiction of violation of this chapter.

"In case of applications by corporations, except applications for club licenses, the names and addresses of, and the amount of stock held by, all stockholders holding one or more per centum of any of the stock thereof, of all officers and of all members of the board of

directors must be stated in the application, and if one or more of such officers or members of the board of directors or any holder directly or indirectly, whether through an intermediary corporation or otherwise, of ten per centum (10%) or more in beneficial interest of the capital stock of the corporation would fail to qualify as an individual applicant in all respects, except as to citizenship, residence or age, no license of any class shall be granted.

"In case of application for club licenses, the names and addresses of all officers, trustees, directors, or other governing officials, together with the names and addresses of all members of the corporation, association or organization must be stated in the application.

"In the case of application by a partnership, the application shall contain the names and addresses of all of the partners. No license shall be issued unless all of the partners would qualify as individual applicants.

"A photostatic copy of all Federal licenses, permits and stamps necessary to the lawful conduct of the business for which a State license is sought and which relate to alcoholic beverages, or other evidence in lieu thereof satisfactory to the commissioner, must accompany the license application, together with a deposit of the full amount of the required license fee, which deposit to the extent of ninety per centum (90%) thereof shall be returned to the applicant by the commissioner or other issuing authority if the application is denied, and the remaining ten per centum (10%) shall constitute an investigation fee and be disposed of as hereinafter provided.

"Every applicant for a license shall cause a notice of intention to make such application to be published in a form prescribed by rules and regulations, once a week for two weeks successively in a newspaper, printed in the English language, published and circulated in the municipality in which the licensed premises are located; but if there shall be no such newspaper, then such notice shall be published in a newspaper, printed in the English language, published and circulated in the county in which the licensed premises are located. No publication shall be required with respect to applications for transportation or public warehouse licenses.

"All applications shall be duly sworn to by each of the applicants, except in the case of applicants in the military service of the United States whose applications may be signed in their behalf by an attorney-in-fact holding a power of attorney in form approved by the State Commissioner of Alcoholic Beverage Control, and except in cases of applications by corporations which shall be duly sworn to by the president or vice-president. All statements in said applications required to be made by law or by rules and regulations shall be deemed material, and any person who shall knowingly misstate any material fact, under oath, in said application shall be guilty of a misdemeanor. Fraud, misrepresentation, false statements, misleading statements, evasions or suppression of material facts in the securing of a license are grounds for revocation.

"2. This act shall take effect immediately."

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3. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENT IN LICENSE APPLICATION - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - HOLDER OF LICENSE IN EACH OF TWO MUNICIPALITIES - "FARMING ONE OUT" - SITUATION CORRECTED BY BONA FIDE TRANSFER (TO QUALIFIED HOLDER) OF LICENSE PREVIOUSLY "FARMED OUT" - LAST MENTIONED LICENSE SUSPENDED FOR 20 DAYS - REMAINING LICENSE SUSPENDED FOR 40 DAYS.

In the Matter of Disciplinary Proceedings against)

JOHN STETZ,)
 T/a ATLANTIC CAFE,)
 1425 Mt. Ephraim Ave.,)
 Camden, N. J.,)

Holder of Plenary Retail Consumption License C-61, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden,)

and)

Transferred during the pendency of these proceedings to)

JOHN WALKER,)
 for the same premises,)

CONCLUSIONS AND ORDER

-and-)

In the Matter of Disciplinary Proceedings against)

JOHN STETZ,)
 T/a JOHN'S BAR,)
 218 Madison Street,)
 Riverside, N. J.,)

Holder of Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Riverside,)
 - - - - -)

Felcone & Felcone, Esqs., by Joseph J. Felcone, Esq., Attorneys for Licensee, John Stetz.
 A. Millard Taylor, Esq., Attorney for John Walker.
 Abraham Merin, Esq., Attorney for State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee has pleaded guilty to charges alleging that:

(1) He falsified his Camden license applications by denying that anyone other than himself had any interest therein, whereas William Marshall and John Walker, successively, had such interests, in violation of R. S. 33:1-25; and

(2) He aided and abetted William Marshall and John Walker, successively, to exercise the privileges of his Camden licenses contrary to R. S. 33:1-26, in violation of R. S. 33:1-52; and

(3) He falsified his Camden applications by denying that he had any interest in any other license which had been suspended, whereas his Riverside license had been suspended for fifteen days, in violation of R. S. 33:1-25.

All of the facts are admitted. It appears that Stetz, owner of both properties covered by the licenses in question, has held a license at Riverside ever since Repeal, and at Camden since June 22, 1937. The Riverside premises have always been operated by him. At the Camden premises, however, he is merely the nominal licensee. Actual ownership of the latter license and the business conducted thereunder was vested in Marshall from July 1937 to July 1939, and from July 1939 in Walker. Apparently Stetz, as landlord of the Camden premises, was fearful that unless he had full control over the license there, his tenant might cause the license to be transferred to other premises.

In effect, therefore, Stetz has been "farming out" the Camden license ever since July 1937. This type of violation warrants a substantial penalty. A licensee who deliberately "farms out" his license to others for financial gain perpetrates a serious fraud upon the State which strikes at the very root of the liquor licensing system. He thereby constitutes himself an extra-legal issuing authority and virtually grants licenses to others. Where a licensee has been found guilty of such violation after pleading not guilty thereto, a revocation of the license was indicated and effected. See Re Business Men's Associates, Inc., Bulletin 348, Item 6.

In this case, however, all of the parties concerned have made a clean breast of all the facts. Neither Marshall nor Walker, the present tenant, appears to be disqualified from holding a liquor license in his own right. Furthermore, it is generally the undisclosed principal (in this case, Walker) who bears the brunt of the penalty inflicted against the licensee. It is to be noted that Walker is far from blameless. He knew, or should have known, the law and obeyed it. However, Stetz, while merely the nominal licensee of the Camden premises, is, nevertheless, the person primarily responsible for the instant violation. It was his "scheme" that ran afoul the law. Since he is also the holder of a liquor license at Riverside, he may be effectively punished by a suspension of that license.

Following the institution of these proceedings, the Camden license has been transferred to John Walker. The unlawful situation existing heretofore with respect to that license has, therefore, been fully corrected. A penalty is none-the-less in order. I shall suspend the license now held by Walker for twenty days.

As indicated above, I consider Stetz to be the principal offender in this case. If it were not that Stetz had insisted upon having the Camden license issued in his name, there would apparently have been a transfer of that license to Marshall, and a subsequent transfer thereof to Walker.

Moreover, Stetz has a previous record at his Riverside premises. On March 6, 1939 his license was suspended for fifteen days for selling alcoholic beverages on Sunday in violation of local regulation. This is the suspension which he failed to disclose in his

Camden applications and which is referred to in the third charge herein. In view of all the circumstances, I shall suspend the Riverside license for forty days.

Since neither license has been revoked, no order declaring either premises ineligible to be the subject of a liquor license may be entered. See R. S. 33:1-31.

Accordingly, it is, on this 13th day of May, 1942,

ORDERED, that Plenary Retail Consumption License C-61, heretofore issued to John Stetz, t/a Atlantic Cafe, by the Municipal Board of Alcoholic Beverage Control of the City of Camden for premises at 1425 Mt. Ephraim Avenue, Camden, and transferred during the pendency of these proceedings to John Walker for the same premises, be and the same is hereby suspended for a period of twenty (20) days, commencing May 18, 1942, at 7:00 A. M. and concluding June 7, 1942, at 7:00 A.M.; and it is further

ORDERED, that Plenary Retail Consumption License C-6, heretofore issued to John Stetz, t/a John's Bar, by the Township Committee of the Township of Riverside for premises at 218 Madison Street, Riverside, be and the same is hereby suspended for a period of forty (40) days, commencing May 18, 1942, at 6:00 A.M. and concluding June 27, 1942, at 6:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

- 4. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING CRIMINAL RECORD -- 10 DAYS' SUSPENSION - FRONT - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING THE INTEREST OF ANOTHER - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - SITUATION CORRECTED - 15 DAYS' SUSPENSION - TOTAL: 25 DAYS.

In the Matter of Disciplinary Proceedings against)
)
 MARY DIODATI,)
 White Horse Pike, Ancora,)
 Winslow Township,)
 P. O. Hammonton, N. J.,)
 R. F. D. 2,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-19 for the 1940-41 fiscal year (when these proceedings were brought) and now holder of Plenary Retail Consumption License C-20 for the current fiscal year, both having been issued by the Township Committee of the Township of Winslow.)
 -----)

Mary Diodati, Pro se.
 Robert R. Hendricks, Esq., Attorney for State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant, holder of a plenary retail consumption license for a tavern in Winslow Township, has been served with charges alleging that:

- (1) and (2): In her license applications for 1939-40 and 1940-41 she concealed her criminal record, in violation of R. S. 33:1-25.
- (3) and (4): Her predecessor in interest, Thomas DiGiacomo, who held a 1939-40 license in the Township from July 1, 1939 until March 26, 1940, when it was transferred to the defendant, concealed in his applications for such license that the defendant was the real owner of the business, in violation of R. S. 33:1-25; and also permitted the defendant to exercise the rights and privileges of that license, in violation of R. S. 33:1-26, 52. For the defendant's liability for any such violations of her predecessor, see Rule 2 of State Regulations 15; Re Morley, Bulletin 427, Item 3.
- (5) The defendant exercised such rights and privileges of the said DiGiacomo license, in violation of R. S. 33:1-26.

Although making no formal plea in the case, the defendant, who appeared without attorney, asserts in substance that she should be acquitted on all the charges.

As to (1) and (2): The defendant, in her license applications in question, expressly denied that she had ever been convicted of any liquor offense or of any crime whatsoever. Actually, this denial was false since, as the defendant now fully admits, she was convicted in 1930 of possessing and selling liquor at a "speakeasy" and (in a joint indictment) of maintaining such "speakeasy." As a sequel to this conviction she was fined \$350.00.

Since this Prohibition offense was apparently without aggravating circumstances, it does not, within the rulings of this Department, involve the element of moral turpitude and hence does not peremptorily disqualify the defendant from being a licensee. See R. S. 33:1-25; Re DiOrio, Bulletin 509, Item 8, and cases there cited.

However, this fact in no way excuses the defendant for her failure to reveal that conviction. As I recently stated in DiOrio, supra:

"An applicant is required to disclose any and all convictions of crime so that an issuing authority, even if there be no mandatory disqualification, may nevertheless properly determine whether, in its sound discretion, the applicant should be viewed as personally fit for a license. See Re Blanker, Bulletin 254, Item 6."

In explaining why she did not reveal the conviction, the defendant asserts that she was actually innocent of any intent to conceal anything; that she had made inquiry of the Township Clerk before filling out her first application and had been informed by him that she need not reveal her criminal conviction.

This claim carries no weight. Passing over the fact that the defendant has apparently made no move to produce this Clerk, there is the more fundamental fact that the questions in the application which ask for the applicant's criminal record are so simple and clear that they cannot reasonably be misunderstood. If an applicant chooses, whether on advice of another or not, to disregard the plain purport of these questions, the risk is squarely upon that applicant's head.

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

As to (3), (4) and (5): These charges are based upon the theory that Thomas DiGiacomo, who held a license in the Township from July 1, 1939 until March 26, 1940, when it was transferred to the defendant, was actually holding his license merely as a "front" for the defendant.

Both the defendant and DiGiacomo claim that, during the time when DiGiacomo thus held the license, he was actually the owner of the business and that the defendant was merely installed as a manager there. However, it is amply clear from the evidence that DiGiacomo, who has always worked elsewhere, knew nothing about the business and had nothing to do with it. That the defendant was its real proprietor is clearly revealed by the unimpeached testimony of the defendant's daughter-in-law. The latter, who lived with the defendant during a substantial part of the time in question, frankly stated that the defendant acted as the owner of the business; that it was common repute in the family that, although the license was nominally in Thomas DiGiacomo's name, she was the real owner; and that the defendant had at one time specifically stated that she had to pawn her jewels in order to put herself in requisite funds for the license fee.

Hence I conclude that the defendant was, during the time when DiGiacomo held the license, the actual although undisclosed proprietor of the business and, with DiGiacomo's connivance, operated the tavern under that license.

It is not clear as to why the defendant, who eventually took the license in her own name, resorted to this device of using DiGiacomo as a "front." It may perhaps be that she feared that her criminal conviction actually disqualified her or might lead to a denial of any application made by her for a license. Her failure to reveal her conviction, when actually applying in her own name, lends credence to this view.

However, since the fact of the "front" is clear, I find the defendant guilty on charges (3), (4) and (5), whatever her motive may have been.

As to penalty: For the defendant's concealment of her criminal record in her applications in question, her license will be suspended for ten days. See DiOrto, supra. For the "front", I will -- weighing, on the one hand, the above possible motive for such "front" and, on the other, the fact that the "front" was actually corrected before the present investigation began -- suspend the defendant's license for an additional fifteen days, thus making a total of twenty-five days.

Such penalty, although being imposed in proceedings which were instituted during the last licensing year, is nevertheless fully effective against the defendant's license for the current year. See State Regulations 15; Re Byer, Bulletin 477, Item 4.

Accordingly, it is, on this 21st day of May, 1942,

ORDERED, that Plenary Retail Consumption License C-20, heretofore issued to Mary Diodati for premises on White Horse Pike, Ancora, Winslow Township, by the Township Committee of the Township of Winslow, be and the same is hereby suspended for a period of twenty-five days commencing at 2:00 A. M. May 25, 1942 and concluding at 2:00 A. M. June 19, 1942.

ALFRED E. DRISCOLL,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - UNLAWFUL TRANSPORTATION IN VIOLATION OF R. S. 33:1-2 - FORFEITURE ORDERED IN COMPANION SEIZURE PROCEEDINGS HELD SUFFICIENT PENALTY.

In the Matter of Disciplinary Proceedings against)

SEBASTIAN CROCIATA)
(also known as Sebastian Crociato),)

Holder of Plenary Retail Distribution License D-13, issued by the Board of Alcoholic Beverage Control of the City of Paterson for premises located at 1150 Main Street, Paterson, and also)

CONCLUSIONS

Holder of Plenary Retail Distribution License D-2, issued by the Municipal Council of the City of Clifton, for premises known as 751 Main Avenue, Clifton.)

Frazer, Stoffer & Jacobs, Esqs., by Joseph M. Jacobs, Esq., Attorneys for Licensee.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee was served with a copy of the following charge:

"On or about November 13, 1941 you transported alcoholic beverages in and about the City of Paterson, not pursuant to and within the terms of your plenary retail distribution license, in that you transported two cases of beer in a vehicle which bore no transportation insignia as required by State Rules and Regulations; said transportation being in violation of R. S. 33:1-2."

The licensee (hereinafter referred to as Crociata, which appears to be his correct name), does not dispute any of the facts and the case has been submitted upon the testimony taken in a seizure hearing hereinafter referred to.

On November 13, 1941 Salvatore Campanella, manager of the Paterson store owned by Crociata, was transporting, in a Ford sedan owned by Campanella, two cases of tax-paid beer from the licensee's premises at 1150 Main Street to a customer at 38 Buffalo Avenue, Paterson. At that time the Ford sedan bore no transportation insignia as required by R. S. 33:1-28. During the course of the transportation, agents of this Department seized the automobile and the beer because it appeared that the alcoholic beverages were being unlawfully transported. The records of this Department show that thereafter seizure case No. 6154 was instituted by this Department. After this seizure case was started, the sum of \$175.00 was paid under protest to obtain the release of the Ford sedan and the seizure case proceeded against the money deposited in lieu of the Ford sedan and the beer, which had been seized.

At the hearing in Case No. 6154 Crociata testified that he is the owner of the two licensed premises mentioned in this proceeding, which are separated from each other by a distance of about

twelve blocks, although located in different municipalities; that he usually made all deliveries from his Clifton store in his Plymouth automobile, which bears a proper transportation insignia, and that he had instructed Campanella to notify him of any deliveries to be made from the Paterson store so that such deliveries might also be made in the Plymouth automobile. Campanella testified in the seizure hearing that he had received these instructions. It appears, however, from the testimony in that case that on at least two occasions Campanella violated his employer's instructions and made deliveries in his Ford sedan. It also appears that shortly prior to November 13, 1941 Crociata had applied to this Department for a transportation insignia to cover the Ford sedan but had been advised that the insignia could not be issued unless the Ford sedan was under his control; that he thereafter leased this car from Campanella and that shortly after November 13, 1941 he obtained a transportation insignia for the Ford sedan.

As a result of the hearing in Case No. 6154, the sum of \$175.00, representing the retail value of the Ford sedan, was forfeited and ordered to be turned over to the State Treasurer for the use of the State, and the two cases of beer were also forfeited and ordered to be retained for the use of hospitals and State, county and municipal institutions or destroyed in whole or in part at the direction of the Commissioner.

From the above statement of facts it appears that the licensee is guilty as charged because he is responsible for the acts of his agent in the course of the conduct of the licensed business, despite the fact that his agent may have violated the licensee's instructions.

As to penalty: If, instead of the forfeiture ordered in the seizure proceedings, that case had been terminated by permitting Campanella to obtain a permit to validate the unlawful transportation, this proceeding against the licensee would not have been instituted. Re Union Township Committee, Bulletin 383, Item 7. The forfeiture of the deposit was ordered in the seizure proceedings because, from the evidence taken therein, it appeared that Campanella, the owner of the car, had not acted in good faith but had knowingly violated the law. Hence, instead of permitting Campanella to obtain a validating permit, the whole deposit was forfeited. The forfeiture of the tax-paid beer owned by Crociata was also ordered in the seizure hearing because of the licensee's liability for his agent's acts. However, so far as Crociata himself is concerned, there appear to be no aggravating circumstances. Moreover, Crociata has testified that the money deposited to secure the return of the car actually belonged to him so that he has lost not only the tax-paid beer but also the sum of \$175.00 as a result of the seizure proceedings. I think that the licensee has been sufficiently punished. No suspension of either of his licenses will be imposed herein.

Accordingly, I find the licensee guilty as charged. Under the circumstances, no other penalty will be imposed.

ALFRED E. DRISCOLL,
Commissioner.

Dated: May 22, 1942.

6. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION - AIDING AND ABETTING NON-LICENSEE (DISQUALIFIED BECAUSE OF RESIDENCE) TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - FAILURE TO GIVE NOTICE OF STOCK TRANSFER AS REQUIRED BY R. S. 33:1-34 - FRANK DISCLOSURE - SITUATION NOT CORRECTED - SUSPENSION FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT AFTER EXPIRATION OF 20 DAYS UPON PROOF THAT DISQUALIFICATION HAS BEEN REMOVED.

DISCIPLINARY PROCEEDINGS - FAILURE TO DISCLOSE INTEREST IN LICENSE IN APPLICATION FOR EMPLOYMENT PERMIT, IN VIOLATION OF R. S. 33:1-25 - EXERCISING THE RIGHTS AND PRIVILEGES OF THE LICENSE - EMPLOYMENT PERMIT SUSPENDED FOR BALANCE OF TERM.

In the Matter of Disciplinary Proceedings against)

THE A. M. HOME STORES, INC.,)
 5612 Monmouth Avenue,)
 Ventnor City, N. J.,)

Holder of Plenary Retail Distribution License D-7 issued by the Common Council of the City of Ventnor City,)

-and-)

CONCLUSIONS AND ORDER

In the Matter of Disciplinary Proceedings against)

ABE SCHNEIDER,)
 5610 Monmouth Avenue,)
 Ventnor City, N. J.,)

Holder of Employment Permit 7140 issued by the State Commissioner of Alcoholic Beverage Control.)

Alexander K. Blatt, Esq., Attorney for The A. M. Home Stores, Inc. and Abe Schneider.
 Emerson A. Tschupp, Esq., Attorney for State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant, A. M. Home Stores, Inc., holder of a plenary retail distribution license in Ventnor City, pleads guilty to charges which, for convenience, may here be summarized and restated as follows:

- (1), (2), (3) and (4). In its license application the defendant, although listing Max Engel and Abe Schneider as the holders of but one share of stock apiece and Regina Kane as holder of the remaining ten, concealed, in violation of R. S. 33:1-25, the fact that the said Engel and Schneider were the real owners of all the shares; that they were the beneficial proprietors of the business; and that they were not residents of the State for the last five years.

- (5) The defendant permitted the said Engel and Schneider to exercise the rights and privileges of its license, in violation of R. S. 33:1-26, 52.
- (6) The defendant, after obtaining the license in question, failed to give the Common Council of Ventnor City notice, as required by R. S. 33:1-34, of the fact that on December 9, 1941 the ten shares of stock in Regina Kane's name had been transferred to the name of Mary Nardo.
- (7) Such transfer of stock to Mary Nardo was an act which, had it occurred before granting of the license, would, in view of Mary Nardo's being a minor, have prevented the issuance of such license. See R. S. 33:1-12.1, 25, 31.

The defendant, Abe Schneider, holder of an employment permit, pleads guilty to the charges that:

- (1) In his permit-application he concealed his interest in the license in question, in violation of R. S. 33:1-25.
- (2) He has been exercising the rights and privileges of such license, in violation of R. S. 33:1-26.

The facts in these affiliate cases are substantially clear. In August 1941 Max Engel and Abe Schneider, then residents of New York, made arrangements to buy the liquor and grocery store at the premises in question in Ventnor City. Being barred by their lack of five years' residence in this State from holding any retail liquor license or owning more than 10% of the stock in any such corporate licensee in New Jersey (R. S. 33:1-12.1, 25), they sought to evade this restriction by organizing the A. M. Home Stores, Inc., purporting to take but one share apiece (or 8-1/3%) of the corporation's twelve shares of stock, and assigning the rest to Regina Kane (their attorney's secretary) to hold as a mere "front" for them. Then, by not disclosing the full facts in the application, they obtained a transfer of the store's liquor license to the corporation in September 1941, and operated the licensed business under this fraudulent and illegal guise.

Later, on December 9, 1941, Engel sold out his interest to one Herman Charnet. At or about the same time, the ten shares of stock in Regina Kane's name were transferred to the name of Mary Nardo (the attorney's new secretary), who continued to hold them as a mere "front." In making these changes, the defendant failed to give requisite notice to the Common Council of Ventnor City. See R. S. 33:1-34.

These changes did not (and apparently were not intended to) put the corporate licensee in a bona fide status but, instead, kept the bulk of the shares of stock in the hands of a mere "front" to screen the real holdings of the disqualified Schneider as well as his new "partner" Charnet. Moreover, the new "front", Mary Nardo, being a minor, is herself disqualified from being an owner, record or otherwise, of more than 10% of the stock. See R. S. 33:1-12.1, 25.

As to penalty: To prevent continued operation of the licensed business under this unlawful arrangement, the license will be suspended for the balance of its term. However, in view of the plea and the frank disclosure of facts on behalf of the defendant, this suspension may, on proper showing of a satisfactory and bona fide

correction, be lifted after at least twenty days of such suspension have been served in penalty for the original and the continued "front" and for the defendant's failure to notify the local issuing authority of the stock transfer. For similar disposition in these "front" cases to evade the residence requirement, see Re Steinman, Bulletin 502, Item 9, and cases there cited. For the Department's more stringent policy to be followed in this or any other type of "front" case after July 1, 1942 (i.e., the commencement of the coming licensing year), see my Release of May 16, 1942. Also see Re Steiner, Inc., Bulletin 511, Item 3.

It should be noted that affiliate proceedings were brought in this case to cancel the license outright because of the corporation's illegal set-up. However, in view of the above disposition, these proceedings for cancellation are dismissed. Cf. Re Steiner, supra.

As to Schneider's employment permit, heretofore issued by this Department to allow him to work on licensed premises despite his lack of five years' residence in New Jersey, such permit will be suspended forthwith for the balance of its term. Cf. Re Steiner, supra.

Accordingly, it is, on this 23rd day of May, 1942,

ORDERED, that Plenary Retail Distribution License D-7, heretofore issued by the Common Council of the City of Ventnor City to The A. M. Home Stores, Inc. for 5612 Monmouth Avenue, Ventnor City, be and the same is hereby suspended for the balance of its term, effective at 2:00 A. M. May 27, 1942; and it is further

ORDERED, if it satisfactorily appears, on verified petition and proper proof, that the "front" herein has been fully and properly corrected, the said suspension will be lifted; provided, however, that in no event shall such suspension be lifted prior to the expiration of twenty (20) days from the effective date of the suspension; and it is further

ORDERED, that Employment Permit 7140, issued to Abe Schneider by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended, effective immediately, for the balance of its term.

ALFRED E. DRISCOLL,
Commissioner.

7. OTHER MERCANTILE BUSINESS - PHOTOMATIC PICTURE VENDING MACHINE
PROHIBITED ON PREMISES LICENSED FOR ON-PREMISES CONSUMPTION.

May 25, 1942

Mr. John W. Moore,
Neptune, N. J.

Dear Sir:

Investigators of this Department report that you have on your licensed premises a Photomatic machine which is an automatic device for taking photographs. It is described as a device which upon insertion of a ten-cent coin, takes a picture and vends it complete with frame approximately one minute later.

R. S. 33:1-12, which sets forth the terms of Class C licenses, states in part:

"Plenary retail consumption license. 1. The holder of this license shall be entitled, subject to rules and regulations, to sell for consumption on the licensed premises any alcoholic beverages by the glass or other open receptacle, and also to sell all alcoholic beverages in original containers for consumption off the licensed premises; but this license shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which a grocery, delicatessen, drug store or other mercantile business (except the keeping of a hotel or restaurant, or the sale of cigars and cigarettes at retail as an accommodation to patrons, or the retail sale of non alcoholic beverages as accessory beverages to alcoholic beverages) is carried on.***"

The maintenance of a Photomatic machine for the vending of pictures constitutes another mercantile business within the meaning of this section.

It must, therefore, be removed from the licensed premises.

Very truly yours,
ALFRED E. DRISCOLL,
Commissioner.

8. DISCIPLINARY PROCEEDINGS - SLOT MACHINES - 10 DAYS' SUSPENSION - GAMBLING ON LICENSED PREMISES - 5 DAYS' SUSPENSION - TOTAL: 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against
THIRTEENTH WARD REPUBLICAN CLUB, INC.,
1324 Mechanic Street,
Camden, N. J.,
Holder of Club License No. CB-3 issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

CONCLUSIONS AND ORDER

William T. Cahill, Esq., Attorney for Defendant-Licensee.
William F. Wood, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee has pleaded guilty to charges alleging that: (1 and 2) on December 7, 1941, it possessed, or permitted on the licensed premises, two slot machines in violation of Rule 8 of State Regulations No. 20, and that they were devices designed for the purpose of gambling, and hence their possession by the licensee, or presence on the licensed premises, was in violation of Rule 7 of State Regulations No. 20; (3) on or about the same date it permitted gambling on the licensed premises in that it allowed the playing of the game of stud poker for money, in violation of Rule 7 of the above Regulations.

The Department file discloses that on the day in question the custodian admitted the investigators to the club house, which is a two story building; that they proceeded to the barroom on the second floor where they observed seven men playing stud poker for money. In front of the bar there was a steel cabinet which, when opened, was found to contain a 5¢ and a 25¢ jack-pot slot machine. The investigators played each machine once. The custodian then informed them that only members were allowed to play the machines.

Mere possession of a slot machine on licensed premises, without more, is a violation of the State Regulations. Yountakah Country Club, Inc., Bulletin 488, Item 4. The usual penalty for this offense is ten days.

The stud poker game on the licensed premises was evidently a "social" pastime and not commercialized gambling. This is a factor in licensee's favor but it cannot entirely excuse the offense, since any type of gambling on licensed premises is forbidden by the law. The minimum penalty for this violation is five days.

I note that licensee's record is not entirely clear. In 1935 it was alleged to have possessed three slot machines and to have sold alcoholic beverages to an investigator who was not a member of the club. The Municipal Board of Alcoholic Beverage Control of the City of Camden, to whom the matter was referred, advised this Department that it had taken no action against the licensee "as the matter had been adjusted." I am now confronted with the question as to whether I shall treat the instant case as a second offense, and hence requiring increased penalty.

The licensee's record is otherwise clear of any offenses in the intervening six years and the previous alleged misconduct may well be too remote for consideration in the instant proceeding. Moreover, it seemingly would be unfair and un-American to hold the licensee responsible for alleged misconduct of which it was suspected but not convicted, where such licensee did not have its day in court, nor was called upon, even informally, to give its version of the affair. However, the licensee should take heed and in the future avoid even a suspicion of misconduct.

By entering a guilty plea, the licensee has saved the Department the time and expense of proving its case, for which five days of the total penalty of fifteen days will be remitted.

Accordingly, it is, on this 26th day of May, 1942,

ORDERED, that Club License No. CB-3, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to the Thirteenth Ward Republican Club, Inc. for premises 1324 Mechanic Street, Camden, be and the same is hereby suspended for a period of ten (10) days, commencing June 1, 1942, at 2:00 A. M. and terminating June 11, 1942, at 2:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

9. FRONTS - NEW POLICY EFFECTIVE JULY 1, 1942 - PENALTY OUTRIGHT
 REVOCATION OR SUBSTANTIAL SUSPENSION.

June 1, 1942

Numerous cases have been brought to my attention where the nominal holder of a liquor license has not been the real owner of the business. Likewise, in some instances, a corporation has been used to hide the real interest of disqualified persons in the licensed business. In other words, in those cases, the person or corporation to whom the license was issued was merely a "front" for another. In the past, this device has been favored by racketeers and those with disqualifying records, criminal and otherwise, as well as by a considerable number of innocent but misguided persons who have sought to get into the liquor business in New Jersey.

Nearly all of these cases have involved false statements in the application for license made by the nominal licensees or the officers of corporations seeking licenses. During the past two calendar years, the Department has instituted numerous disciplinary proceedings based upon charges of fraud in the license application and concealed ownership of the business. As a result, 22 licenses have been revoked; 4 cancelled, and 60 suspended for varying periods of time. A continuation of this type of violation indicates that the Department has been too lenient in the penalties imposed. A new policy is in order.

Fair warning is hereby given that, in all disciplinary cases involving a "front" created or continued after July 1, 1942, the penalty will be outright revocation of the license or suspension for a period of time as will adequately punish the violator and break up the practice.

There is no excuse for perjury. Applicants for liquor licenses must answer each question in the application frankly and honestly. Public policy in this State demands a full disclosure of all persons interested in the application and the business. False swearing will not be tolerated.

Issuing authorities whose duty it is to carefully consider each application for a liquor license should not be called upon to act blindly. They are entitled to know all of the facts before they assume the serious responsibility of issuing a license.

Disqualified persons should not attempt, either by direction or indirection, to secure a license. It is useless for them to try to beat the law.

Licensees should bear in mind that any misrepresentation or suppression of material facts is not only ground for revocation of the license, but also constitutes a misdemeanor, punishable by fine or imprisonment. Aggravated cases will be referred to the County Prosecutor for criminal prosecution.

A word to the wise should be sufficient!

New Jersey State Library

Alfred E. Griswell
 Commissioner.

AG