

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

BULLETIN 451

MARCH 28, 1941.

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

BULLETIN 451

MARCH 28, 1941.

1. DISCIPLINARY PROCEEDINGS - SALES DURING PROHIBITED HOURS -
5 DAYS' SUSPENSION - OPEN DURING PROHIBITED HOURS - 5 DAYS'
SUSPENSION - TOTAL: 10 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary)
Proceedings against)

BELMONT TAVERN, INC.,)
210 Belmont Ave.,)
Newark, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-466 issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City)
of Newark.)
-----)

Belmont Tavern, Inc., by Joseph Lucks, President.
Richard E. Silberman, Esq., Attorney for the Department of
Alcoholic Beverage Control.

This licensee pleaded guilty to charges that at about
6:30 A.M. on February 8, 1941 it sold and served alcoholic beverages,
and its licensed premises, where the principal business is the sale
of alcoholic beverages, were open, in violation of Section 1 of
Ordinance 3930 adopted by the Board of Commissioners of the City of
Newark on December 21, 1938.

This matter was investigated by officers of the Newark
Police. The police file discloses that, at approximately 6:30 A.M.
on the date in question, two detectives passing the premises ob-
served two men enter through the front door. The officers followed
soon thereafter and found two men at the bar with glasses of whiskey
before them. The bartender in charge at the time gave the officers
a signed statement admitting that he had served alcoholic beverages
and that the premises were open before 7:00 A.M. in violation of the
Newark ordinance.

The minimum penalty for each charge is five days.
Re Grande, Bulletin 442, Item 4, and the items therein cited. The
licensee has no previous record. The license will, therefore, be
suspended for the minimum period of ten days.

By entering a guilty plea in ample time before the date
set for hearing, the licensee has saved the Department the time and
expense of proving its case, for which five days of the total pen-
alty will be remitted.

Accordingly, it is, on this 11th day of March, 1941,

ORDERED, that Plenary Retail Consumption License C-466,
heretofore issued to Belmont Tavern, Inc. by the Municipal Board of
Alcoholic Beverage Control of the City of Newark, be and the same is
hereby suspended for a period of five (5) days, effective March 17,
1941, at 3:00 A.M.

E. W. GARRETT,
Acting Commissioner.

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

In the Matter of Disciplinary Proceedings against
 HENRY (HARRY) SPRINGOB,
 459 Jackson Avenue,
 Jersey City, N. J.,
 Holder of Plenary Retail Distribution License D-89, issued by the Board of Commissioners of the City of Jersey City.

CONCLUSIONS AND ORDER

Henry Springob, Pro Se.
 Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to charge of selling an alcoholic beverage below Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

The Department file discloses that on February 20, 1941 an investigator of this Department purchased from the wife of the licensee one pint bottle of "Golden Wedding" rye whiskey for \$1.35. The minimum consumer price at which pint bottles of this product could lawfully be sold at the time was in fact \$1.39. Bulletin 440.

It appears that, when the investigator made the purchase, the price of \$1.35 was exhibited on a pint bottle of the product mentioned, and when the investigators identified themselves and called attention to the fact, both the licensee and his wife (who made the sale) explained that they "thought" that \$1.35 was the correct price. They admitted, however, that they had the supplemental Fair Trade list which called for the product to be sold for \$1.39.

The minimum penalty for sale below Fair Trade price is ten days. Since the instant offense is the licensee's first violation of record, the minimum penalty will be imposed.

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

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

ORDERED, that Plenary Retail Distribution License D-89, heretofore issued to Henry Springob by the Board of Commissioners of the City of Jersey City, be and the same is hereby suspended for a period of five (5) days, effective March 17, 1941, at 2:00 A.M.

E. W. GARRETT,
Acting Commissioner.

3. ELIGIBILITY - FORNICATION - ISOLATED, UNAGGRAVATED OFFENSE - NOT MORAL TURPITUDE - APPLICANT NOT DISQUALIFIED BY SUCH CONVICTION.

EMPLOYMENT PERMITS - FALSE STATEMENT IN APPLICATION - PERMIT SURRENDERED - FUTURE PERMIT TO BE WITHHELD FOR 10 DAYS.

March 13, 1941

Re: Case No. 369

Applicant, in obtaining an employment permit because of his failure to qualify as to citizenship, swore that he had never been convicted of a crime. However, when his fingerprint records disclosed that on January 24, 1934 he had been convicted of fornication and placed on probation for one year, he surrendered his permit and requested a ruling as to whether he was disqualified from employment by a liquor licensee by reason of such conviction.

His version of the occurrence given to the Probation Office, and at the hearing herein, is that two girls visited his place of employment as he was about to close and told him they had no place to go. Thereupon, he took them to a restaurant and later found them a room for which he paid in part, and then left them. One of the girls thereafter made a complaint against him but he denied her charges. However, the question of his guilt or innocence cannot be redetermined herein.

The Probation Office reports that his conduct while on probation was respectful and responsive, and that he supported his family to the best of his ability.

The crime of fornication may or may not involve moral turpitude, depending upon the circumstances. Applicant's isolated offense, resulting from a chance encounter, does not involve that element, especially in view of the light sentence imposed. Cf. Case No. 66, Bulletin 202, Item 6.

However, there still remains the fact that applicant, in his application for the permit, failed to reveal his conviction. His explanation that he thought that he was not convicted of a crime unless he served a jail sentence cannot serve as an excuse. The answer is false.

It is recommended that applicant be advised the conviction herein set forth does not involve moral turpitude, but that if he applies for a special employment permit, such permit, if granted, when ready for issuance, will be withheld for a period of ten days because of the false affidavit.

Harry Castelbaum,
Attorney.

APPROVED:
E. W. GARRETT,
Acting Commissioner.

- 4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGE BELOW FAIR TRADE MINIMUM - 10 DAYS' SUSPENSION - SALES DURING PROHIBITED HOURS - 5 DAYS' SUSPENSION - OPEN DURING PROHIBITED HOURS - 5 DAYS' SUSPENSION - TOTAL: 20 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

ULDERICO DALL'AVA,)
 240 Dayton Avenue,)
 Clifton, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Municipal Council of the City of Clifton.)
 -----)

Louis P. Bertoni, Esq., Attorney for the Defendant-Licensee.
 Robert R. Hendricks, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to charges of (1) selling an alcoholic beverage below Fair Trade price, in violation of Rule 6 of State Regulations No. 30; (2) selling and permitting the consumption of alcoholic beverages on his licensed premises during prohibited hours; and (3) permitting his licensed premises to be open during prohibited hours in that sales were made, consumption was permitted and the premises were permitted to remain open on Sunday between the hours of 3:00 A.M. and 1:00 P.M., in violation of Sections 1 and 3 of Ordinance No. 2150, concerning alcoholic beverages, adopted by the Municipal Council of the City of Clifton on December 19, 1939.

The investigation file discloses that on Sunday, September 15, 1940, at or about 12:00 o'clock noon, two investigators of this Department entered the licensed premises, where they found several persons drinking at the bar. Within the next twenty minutes the investigators purchased, from the defendant-licensee, several drinks of whiskey and beer which they consumed at the bar, and also a pint bottle of Wilson "That's All" Whiskey for which the purchasing investigator was charged \$1.25. The minimum consumer price at which a pint bottle of this whiskey could have been sold, lawfully, at that time, was \$1.33. Bulletin 416. Apparently, no excuse or explanation of any kind was offered by the defendant-licensee.

The minimum penalty for sale below Fair Trade price is ten days; for sale and being open during prohibited hours in violation of local regulations, five days on each charge -- making a total of twenty days in all. Since the instant offenses are the defendant-licensee's first violations of record, the minimum penalty will be imposed. Because of the guilty plea the Department has been saved the time and expense of proving its case. Five days of the total penalty will, therefore, be remitted.

Accordingly, it is, on this 13th day of March, 1941,

ORDERED, that Plenary Retail Consumption License C-4, heretofore issued to Ulderico Dall'Ava by the Municipal Council of the City of Clifton, be and the same is hereby suspended for a period of fifteen (15) days, effective March 17, 1941, at 3:00 A.M.

E. W. GARRETT,
 Acting Commissioner.

Detective Streik of the Passaic Police Department testified that on or about September 15, 1940, after receiving information that a colored woman was soliciting in this tavern, he entered the back room of the licensed premises and saw the Perry woman embracing a white man. He further testified as follows:

"I questioned the colored woman, whom I knew as Ida Perry, and I also questioned the white man, and I ordered the colored woman out of the place and told her 'keep out'. I then went to Mr. Bodner and told him I had received information that he was allowing this woman (referring to Ida Perry) to solicit in this tavern and he said 'Well, you are a detective - catch me', and I told him we would give it our best effort."

Morris Bodner, the bartender, in a statement given to investigators of this Department, admitted that he knew the woman in question was a prostitute and that he frequently had had sexual intercourse with her.

Appellant testified that he had hired Bodner as a bartender about the middle of September 1940; that he did not know Ida Perry and that he was not present at the licensed premises on the morning of October 20, 1940. Although the licensee denied that he knew the woman, he admitted, in a statement given to investigators of this Department, that he had seen her in his place on two occasions. It seems to be clear that she was a frequent visitor at the premises between September 15, 1940 and October 20, 1940 and that the bartender, at least, knew that she was a prostitute. It is well established that licensee is responsible for the acts of his employees, and hence, irrespective of the question as to whether or not the licensee himself had knowledge of her character, the evidence is sufficient to sustain the finding of guilt.

The question of punishment is primarily to be determined by the local issuing authority in a case heard by it. Unless it appears that the punishment is clearly excessive, it will not be reduced upon appeal. Vice cannot and will not be tolerated in licensed premises. I find that the penalty is not excessive, especially in view of the fact that in 1935 appellant was found guilty of having untaxed alcoholic beverages in his possession, at which time his license was suspended for thirty days.

The action of respondent is therefore affirmed.

Accordingly, it is, on this 15th day of March, 1941,

ORDERED, that the present appeal be and hereby is dismissed; and it is further

ORDERED, that the order of revocation of appellant's plenary retail consumption license, heretofore entered by respondent and held in abeyance pending disposition of the instant appeal, is hereby restored, to take effect on March 18, 1941, at 3:00 A.M.

E. W. GARRETT,
Acting Commissioner.

6. DISCIPLINARY PROCEEDINGS - SALES BY CLUB LICENSEE TO PERSONS NEITHER MEMBERS NOR GUESTS - 5 DAYS' SUSPENSION - PERMITTING AN ALIEN EMPLOYEE TO SELL ALCOHOLIC BEVERAGES - 5 DAYS' SUSPENSION - TOTAL: 10 DAYS, LESS 5 FOR GUILTY PLEA.

DISCIPLINARY PROCEEDINGS - SALE AND SERVICE BY ALIEN EMPLOYEE HOLDING AN EMPLOYMENT PERMIT - 30 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

SOCIETA' DiMUTUO SOCCORSO)
GUGLIELMO MARCONI,)
45-47 West Old Third Street,)
Florence, New Jersey,)

Holder of Club License CB-3, issued)
by the Township Committee of Florence)
Township;)

and)

COSIMO LUBRIANO,)
45-47 West Old Third Street,)
Florence, New Jersey,)

Holder of Employment Permit No. 204,)
issued by the State Commissioner of)
Alcoholic Beverage Control.)

CONCLUSIONS
AND ORDER

Christopher N. Peditto, Esq., Attorney for the defendant-licensee and defendant-permittee.

Robert R. Hendricks, Esq., Attorney for the Department of Alcoholic Beverage Control.

The defendant club licensee is charged with selling alcoholic beverages to non-members, in violation of Rule 5 of State Regulations No. 7, and with permitting an alien employee, who is the holder of an employment permit for a person disqualified by reason of non-citizenship, to sell alcoholic beverages, in violation of Rule 3 of State Regulations No. 11. The defendant-permittee is charged with selling and serving alcoholic beverages contrary to the condition upon which his employment permit was issued. Separate pleas of guilty have been entered on behalf of both defendants. Since both proceedings have arisen out of the same sale and service of alcoholic beverages, both matters will be treated and disposed of herein.

The investigation file shows that on January 8, 1941 two department agents, who were neither members nor guests of members of the defendant club, entered the licensed premises of the defendant club, where they were served two rounds of beer by the person in charge, Cosimo Lubriano, an alien holder of an employment permit for a person disqualified by reason of non-citizenship. An officer of the defendant club, who appeared on the scene shortly after the sale had taken place and the investigators had disclosed their identity, informed the investigators that Lubriano had been expressly instructed not to sell or serve alcoholic beverages to non-members, but that the defendant club, in the belief that Lubriano's employment permit authorized him to sell and serve club members, had permitted him to act as a bartender and to sell alcoholic beverages to its members. The fact that a violation has been

committed by an employee while acting contrary to the alleged instructions of his employer affords no defense. Re Ziegler, Bulletin 365, Item 7. The licensee is strictly accountable for the acts of his employees. Nor does ignorance of the law or regulations afford any excuse. Licensees and their employees must know the rules and scrupulously adhere to them. Re Fifteenth Ward Political Club, Bulletin 447, Item 1; Re Clover Inn, Inc., Bulletin 327, Item 2.

The instant offenses appear to be the defendant club licensee's and the defendant permittee's first violations of record.

As regards the charge against the defendant club licensee for selling to non-members: The minimum penalty for this violation is five days. Re Fifteenth Ward Political Club, *supra*. In view of the defendant club's past good record, its license will be suspended for the minimum period on this charge.

As to the charges against both the defendant club licensee and the defendant-permittee arising out of the sale and service of alcoholic beverages by the alien permittee: In Re Katz, Bulletin 404, Item 7, where it appeared that the defendant-licensee permitted an alien permittee to sell alcoholic beverages on a single isolated occasion, and under highly mitigating circumstances, the license of the employer was suspended for one day and the permit of the employee for fifteen days. In the instant case, instead of being an isolated occasion, it appears that the alien permittee made, and was permitted to make, a practice of selling and serving alcoholic beverages. Under these circumstances, the license of the defendant club will be suspended for an additional five days and the employment permit of the defendant-permittee for thirty days.

By the entry of the guilty pleas the Department has been saved the time and expense of proving its cases. Five days of the penalty imposed on licensee and permittee will, therefore, be remitted.

Accordingly, it is, on this 18th day of March, 1941,

ORDERED, that Club License CB-3, heretofore issued to Societa DiMutuo Soccorso Guglielmo Marconi by the Township Committee of Florence Township, be and the same is hereby suspended for a period of five (5) days, effective March 24, 1941, at 7:00 A.M.; and it is further

ORDERED, that Employment Permit No. 204, heretofore issued to Cosimo Lubriano by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for a period of twenty-five (25) days, effective March 31, 1941, at 7:00 A.M.

E. W. GARRETT,
Acting Commissioner.

7. MORAL TURPITUDE - DISORDERLY CONDUCT AND CARRYING A CONCEALED WEAPON - NOT MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - WHERE THERE HAS BEEN NO CONVICTION OF A CRIME INVOLVING MORAL TURPITUDE, THERE IS NO DISQUALIFICATION TO BE REMOVED.

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

CONCLUSIONS

Case No. 131.
-----)

In 1933 petitioner was convicted of disorderly conduct and fined \$5.00. Several months later, in the same year, he pleaded guilty to a charge of carrying a concealed weapon and was sentenced to 45 days' imprisonment.

Petitioner now seeks removal, pursuant to R. S. 33:1-31.2, of the statutory disqualification arising from these convictions. Question arises at the outset whether either of the offenses of which petitioner stands convicted is a crime involving moral turpitude. If not, there is no disqualification to be removed.

A conviction arising out of a charge of disorderly conduct is not a conviction of a crime within the meaning of R.S. 33:1-25, 26. Re Case No. 342, Bulletin 423, Item 11; Re Case No. 329, Bulletin 412, Item 9; Re Case No. 318, Bulletin 394, Item 17. No moral turpitude, therefore, is involved in this conviction.

The crime of carrying a concealed weapon may or may not involve moral turpitude, depending upon the circumstances. When the crime stands alone, unattended by other crimes or intent to commit other crimes, it does not, ordinarily, involve moral turpitude. See Re Case No. 265, Bulletin 307, Item 12; Re Case No. 169, Bulletin 193, Item 3.

Investigation by this Department discloses that petitioner, upon entering a "speakeasy" which was then being investigated by police officers, was searched and found to have been in the possession of a pistol. The Probation Department of the county wherein petitioner was arrested and subsequently convicted reports that petitioner "readily admitted the offense with which he was charged, maintaining the reason he had the weapon on his person was in order to sell it for a few dollars to purchase food for himself and wife." Under these circumstances, the crime of carrying a concealed weapon, standing alone, does not involve moral turpitude.

I find that petitioner has never been convicted of a crime involving moral turpitude. No order, therefore, removing disqualification because of conviction, is required. Re Case No. 77, Bulletin 387, Item 9; Re Case No. 68, Bulletin 364, Item 3; Re Case No. 1, Bulletin 208, Item 6.

E. W. GARRETT,
Acting Commissioner.

Dated: March 19, 1941.

8. MORAL TURPITUDE - LARCENY AND RECEIVING STOLEN GOODS INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

In the Matter of an Application)	
to Remove Disqualification be-)	
cause of Conviction, pursuant)	CONCLUSIONS
to R. S. 33:1-31.2.)	AND ORDER
)	
Case No. 138)	
- - - - -)	

In January 1929, in Massachusetts, petitioner was convicted of receiving, and of larceny, and sentenced to imprisonment for from eight to eleven years. This resulted from his dealing in stolen cars while in the automobile business. On May 21, 1934 he was released on parole.

In 1919 he paid a fine of \$5.00 for peddling (presumably without a license), and in 1920 he was convicted of carrying a weapon and paid a fine of \$50.00. His criminal record discloses no other arrests or convictions.

The crime of larceny and receiving ordinarily involves the element of moral turpitude. Re Case No. 297, Bulletin 354, Item 7; Re Case No. 345, Bulletin 427, Item 4. No circumstances appear in the instant case to free petitioner's crime of that element.

After his release from prison in 1934, petitioner was employed by a chain shoe company, in its Boston store, until the early part of 1936; in its Philadelphia store until some time in November 1936; and in its Kingston, Pennsylvania store until March 1940. He then came to New Jersey where, from June 1940 to January 1941, he was employed as manager of the dining room and kitchen in a licensed tavern and restaurant which was owned during that period by his brother, but he testified that he did not handle, sell or serve alcoholic beverages; during the last few months he has been idle.

Three character witnesses who have known him about five, six and four years respectively, appeared at the hearing. All three testified that petitioner's reputation is good and that in their opinion it would not be harmful to the public interest to permit him to become engaged in the alcoholic beverage business.

The Chief of Police in each municipality in which petitioner resided since 1934 reports that his records show no arrests, complaints or pending investigations against him during the past five years.

The only reflection upon petitioner's activities during the past five years is his employment in his brother's licensed premises, while apparently disqualified.

Petitioner swears that he honestly thought that as long as he did not handle liquor he was permitted to be otherwise employed about the licensed premises. While he was, in fact, mistaken as to the extent of his disqualification by reason of his convictions, I shall give him the benefit of the doubt and decide that he acted in good faith.

I conclude that petitioner has led a law-abiding life for the last past five years and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 26th day of March, 1941,

ORDERED, that his statutory disqualification because of the convictions described herein be and the same is hereby lifted, in accordance with the provisions of R. S. 33:1-31.2.

E. W. GARRETT,
Acting Commissioner.

9. DISCIPLINARY PROCEEDINGS - PERMITTING AN ALIEN EMPLOYEE TO SELL ALCOHOLIC BEVERAGES - 5 DAYS' SUSPENSION - PERMITTING A FEMALE EMPLOYEE TO SELL AND SERVE ALCOHOLIC BEVERAGES IN VIOLATION OF LOCAL ORDINANCE - 5 DAYS' SUSPENSION - TOTAL: 10 DAYS, LESS 5 FOR GUILTY PLEA.

DISCIPLINARY PROCEEDINGS - SALE AND SERVICE BY ALIEN EMPLOYEE HOLDING AN EMPLOYMENT PERMIT - 30 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

ANTHONY J. PETRONE, MICHAEL LEVATO and CARMEN DEVITO,)
T/a HILL TOP TAVERN,)
41-43 Morris Street,)
Morristown, N. J.,)

Holder of Plenary Retail Consumption License C-9 issued by the Board of Aldermen of the Town of Morristown;)

-and-)

JOSEPH ANTONIO CHRISTIANO,)
215 1/2 Speedwell Avenue,)
Morristown, N. J.,)

Holder of Employment Permit No. 196, issued by the State Commissioner of Alcoholic Beverage Control.)
-----)

CONCLUSIONS AND ORDER

Anthony J. Petrone, Michael Levato and Carmen DeVito, by Michael Levato.

Joseph Antonio Christiano, Pro Se.

Robert R. Hendricks, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The defendant-licensees are charged (1) with permitting an alien employee, who was the holder of an employment permit for a person disqualified by reason of non-citizenship, to sell alcoholic beverages, in violation of Rule 3 of State Regulations No. 11; and (2) with allowing and employing a female to sell, serve and deliver alcoholic beverages for on-premises consumption on the tavern premises, in violation of Section 6 of an ordinance concerning alcoholic beverages in the Town of Morristown, adopted by the

Board of Aldermen on September 6, 1940. The defendant-permittee is charged with selling and serving alcoholic beverages contrary to the condition upon which his employment permit was issued. Pleas of guilty have been entered by both the defendant-licensees and the defendant-permittee. Both matters will be treated and disposed of herein.

The investigation file shows that on October 21, 1940 the suspicions of the Department investigators, who had entered the licensed premises in order to make a routine inspection thereof, were aroused when they observed Marion Mayers, a female employee, emerging from behind the bar. While Miss Mayers was being questioned in a side room, two patrons were seen to enter the barroom where, apparently, they were sold and served alcoholic beverages by Joseph Antonio Christiano, the alien holder of an employment permit for a person disqualified by reason of non-citizenship. In a statement voluntarily given to the investigators, Miss Mayers stated that she was regularly employed as a waitress and Christiano as a cook on the licensed premises; that since the regular bartender had left (about a week prior to October 21, 1940), Christiano and she had been in charge of the premises during the day; and that, during that period, both Christiano and she had tended bar and sold alcoholic beverages. Christiano, whose command of the English language is limited, made no statement.

The instant offenses appear to be the defendant-licensees' and the defendant-permittee's first violations of record.

As regards the charge against the defendant-licensees for allowing and permitting a female employee to sell and serve alcoholic beverages in violation of local ordinance: The license of the defendant-licensees will be suspended for five days, the minimum penalty for this offense. Re Zokas, Bulletin 446, Item 10; Re Kijek, Bulletin 422, Item 6.

As to the charges against both the defendant-licensees and the defendant-permittee arising out of the sale and service of alcoholic beverages by the alien permittee: The license of the defendant-licensees will be suspended for an additional five days and the employment permit of the defendant-permittee for thirty days. Re Societa Di Mutuo Soccorso Guglielmo Marconi and Re Lubriano, Bulletin 451, Item 6.

By the entry of the guilty pleas, the Department has been saved the time and expense of proving its cases. Five days of the penalty imposed on licensees and permittee will, therefore, be remitted.

Accordingly, it is, on this 26th day of March, 1941,

ORDERED, that Plenary Retail Consumption License C-9, heretofore issued to Anthony J. Petrone, Michael Levato and Carmen DeVito by the Board of Aldermen of the Town of Morristown, be and the same is hereby suspended for a period of five (5) days, effective March 31, 1941, at 7:00 A.M.; and it is further

ORDERED, that Employment Permit No. 196, heretofore issued to Joseph Antonio Christiano by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for a period of twenty-five (25) days, effective April 5, 1941, at 7:00 A.M.

E. W. GARRETT,
Acting Commissioner.

- 10. DISCIPLINARY PROCEEDINGS - SALES BY CLUB LICENSEE TO PERSONS NEITHER MEMBERS NOR GUESTS - 5 DAYS' SUSPENSION - SALES BY CLUB LICENSEE FOR OFF-PREMISES CONSUMPTION - 5 DAYS' SUSPENSION - SALES DURING PROHIBITED HOURS - 5 DAYS' SUSPENSION - TOTAL: 15 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against
 LODGE ARNALDO Da BRESCIA NO. 377,
 SONS OF ITALY OF THE CITY OF
 PLAINFIELD, NEW JERSEY,
 216 Richmond St.,
 Plainfield, N. J.,
 Holder of Club License CB-95,
 issued by the State Commissioner
 of Alcoholic Beverage Control.

CONCLUSIONS
 AND ORDER

Robert R. Hendricks, Esq., Attorney for the State Department
 of Alcoholic Beverage Control.

The defendant club licensee has pleaded guilty to charges of selling alcoholic beverages (1) to non-members, in violation of Rule 5 of State Regulations No. 7, (2) for off-premises consumption, in violation of Rule 5 of State Regulations No. 7, and (3) during prohibited hours, in that sales were made between the hours of 1:00 o'clock Sunday morning and 8:00 o'clock Monday morning, in violation of Section 14A of an ordinance regulating the sale of alcoholic beverages in the City of Plainfield, adopted by the Common Council on June 7, 1937.

The investigation file shows that on September 28, 1940 a Department agent, who was neither a club member nor the guest of a club member, entered the premises of the defendant club licensee and, after answering a few questions concerning his residence, was sold beer and whiskey by John Nocera, the manager and bartender; that on returning at about 9:00 P.M. the following evening, Sunday, September 29, 1940, the same investigator was again sold alcoholic beverages, including, on this occasion, a quart bottle of beer; that on October 4, 1940 the same investigator, accompanied by another agent, who was neither a club member nor the guest of a club member, entered the premises and were sold several glasses of beer and whiskey, together with a quart bottle of beer and a quart bottle of wine; that on the afternoon of Sunday, October 6, 1940, one investigator returned to the licensed premises where he again purchased beer and whiskey for consumption on the premises and a quart bottle of beer for consumption off the licensed premises.

The minimum penalty for sale, by a club licensee, to non-members is five days; for sale for off-premises consumption, five days; for sale during prohibited hours in violation of local regulations, five days - making a total of fifteen days. Since the instant offenses are the defendant-licensee's first violations of record, the minimum penalty will be imposed.

By the entering of the plea the Department has been saved the time and expense of proving its case. Five days of the determined penalty will, therefore, be remitted.

Accordingly, it is, on this 26th day of March, 1941,

ORDERED, that Club License CB-95, heretofore issued to Lodge Arnaldo Da Brescia No. 377, Sons of Italy of the City of Plainfield, New Jersey by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for a period of ten (10) days, effective March 31, 1941, at 8:00 A.M.

E. W. GARRETT,
Acting Commissioner.

11. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - SECOND OFFENSE - 20 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary)
Proceedings against)

RUDOLPH J. SCHWEINLER,)
2020 Bergenline Avenue,)
Union City, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Con-)
sumption License C-176, issued)
by the Board of Commissioners)
of the City of Union City.)

Rudolph J. Schweinler, Pro Se.
Robert R. Hendricks, Esq., Attorney for the State Department of
Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to a charge of selling an alcoholic beverage below Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

The investigation file shows that on February 5, 1941 the defendant-licensee sold a pint bottle of Three Feathers Blended Whiskey to an investigator of this Department for the price of \$1.15. The minimum consumer price at which a pint bottle of this whiskey could have been sold, lawfully, at that time, was \$1.33. Bulletin 424.

The defendant-licensee's only explanation for having charged less than the full Fair Trade price was that he had made "a mistake." Even a bona fide mistake, however, affords no defense to a charge of violating the Fair Trade Regulations. See Re Blum, Bulletin 442, Item 9; Re Lozito, Bulletin 448, Item 6.

The minimum penalty for sale below Fair Trade price is ten days. The instant offense, however, is not the defendant-licensee's first violation of record. In 1939 he pleaded guilty to a similar charge of selling an alcoholic beverage below Fair Trade price, in violation of Rule 6 of State Regulations No. 30, and his license was suspended for five days. Re Schweinler, Bulletin 315, Item 7; Bulletin 362, Item 1. Since the instant offense is the defendant-licensee's second similar violation, the ordinary penalty will be doubled and the license suspended for a period of twenty days. Cf. Re DeGeeter, Bulletin 449, Item 2; Re Fifteenth Ward Political Club, Bulletin 447, Item 1; Re Weiner, Bulletin 441, Item 13.

Entry of the guilty plea, however, has saved the Department the time and expense of proving its case. Five days of the determined penalty will, therefore, be remitted.

Accordingly, it is, on this 26th day of March, 1941,

ORDERED, that Plenary Retail Consumption License C-176, heretofore issued to Rudolph J. Schweinler by the Board of Commissioners of the City of Union City, be and the same is hereby suspended for a period of fifteen (15) days, effective March 31, 1941, at 5:00 A.M.

E. W. GARRETT,
Acting Commissioner.

- 12. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGE BELOW FAIR TRADE MINIMUM - SALES DURING PROHIBITED HOURS - OPEN DURING PROHIBITED HOURS - 20 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA - PETITION FOR RECONSIDERATION AND MODIFICATION OF PENALTY DENIED.

In the Matter of Disciplinary Proceedings against)

ULDERICO DALL'AVA,)
240 Dayton Avenue,)
Clifton, N. J.,)

ON PETITION
CONCLUSIONS

Holder of Plenary Retail Consumption License C-4, issued by the Municipal Council of the City of Clifton.)
-----)

Louis P. Bertoni, Esq., Attorney for Petitioner.

On March 13, 1941 the license of the licensee-petitioner was suspended for fifteen days effective March 17, 1941. Re Dall'Ava, Bulletin 451, Item 4. The order of suspension followed the licensee's guilty plea to charges of (1) selling a bottle of whiskey at less than the Fair Trade price, (2) selling several drinks of beer and whiskey during prohibited hours, and (3) permitting the licensed premises to be open during prohibited hours. The total penalty was computed at twenty days, a five-day remission being allowed for the guilty plea.

The licensee has now presented a petition to reconsider the penalty, and prays that the penalty be reduced.

The petition urges that reduction is warranted (1) because the licensee had entered a guilty plea, and (2) because of "the unusual circumstances and facts" surrounding his case, to wit: (a) that he is over seventy-five years of age; (b) that he has been in business at the licensed premises for the past thirty-eight years, during which time he has never been convicted of any liquor violation; (c) that he was "ignorant and unaware" of the minimum Fair Trade prices, and (d) that he has a reputation in the community as an outstanding, honest and respectable business man and citizen, to such an extent that he is a member of the Board of Directors of the First National Bank of Clifton.

As to (1): Petitioner has already had the full benefit of his guilty plea, in that the indicated suspension of twenty days was reduced to fifteen. He cannot now derive further advantage from that plea since its efficacy has been exhausted.

As to (2): The alleged "unusual" facts and circumstances do not strike me either as unusual or as justifying the reduction of the penalty. (a) A seventy-five year old violator of the liquor law and regulations does as much damage to the cause of enforcement as one who is twenty-five. (b) So does a man who has been in business thirty-eight years equally with a man who has been in business but one. In fact, the man who has been in business longer has even less excuse for violations than the man who has been in business only a short time. (c) Ignorance of the Fair Trade prices has been declared time and time again to be no excuse for sales at less than those prices. Re Blum, Bulletin 442, Item 9; Re Silverstein, Bulletin 441, Item 8; Re Hughes, Bulletin 438, Item 9; Re Aronow, Bulletin 382, Item 4. Prices are published in the official Department bulletins and copy of the price list is mailed to every retail licensee in the State at great expense. (d) It is indeed unfortunate that a person of high repute should have his reputation blemished by conviction of a violation of the liquor law or regulations, but the blot is not erased by merely reducing the penalty imposed following his confession of the violation. Furthermore, common fairness and the democratic principle of equality demand that those in high places be punished for their infractions of the law equally with those in places not so lofty.

I conclude that proper enforcement requires that there be no modification of the penalty. The petition for reconsideration and reduction of the penalty heretofore imposed is, therefore, denied.

Dated: March 27, 1941.

E. W. Barrett

Acting Commissioner.