

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

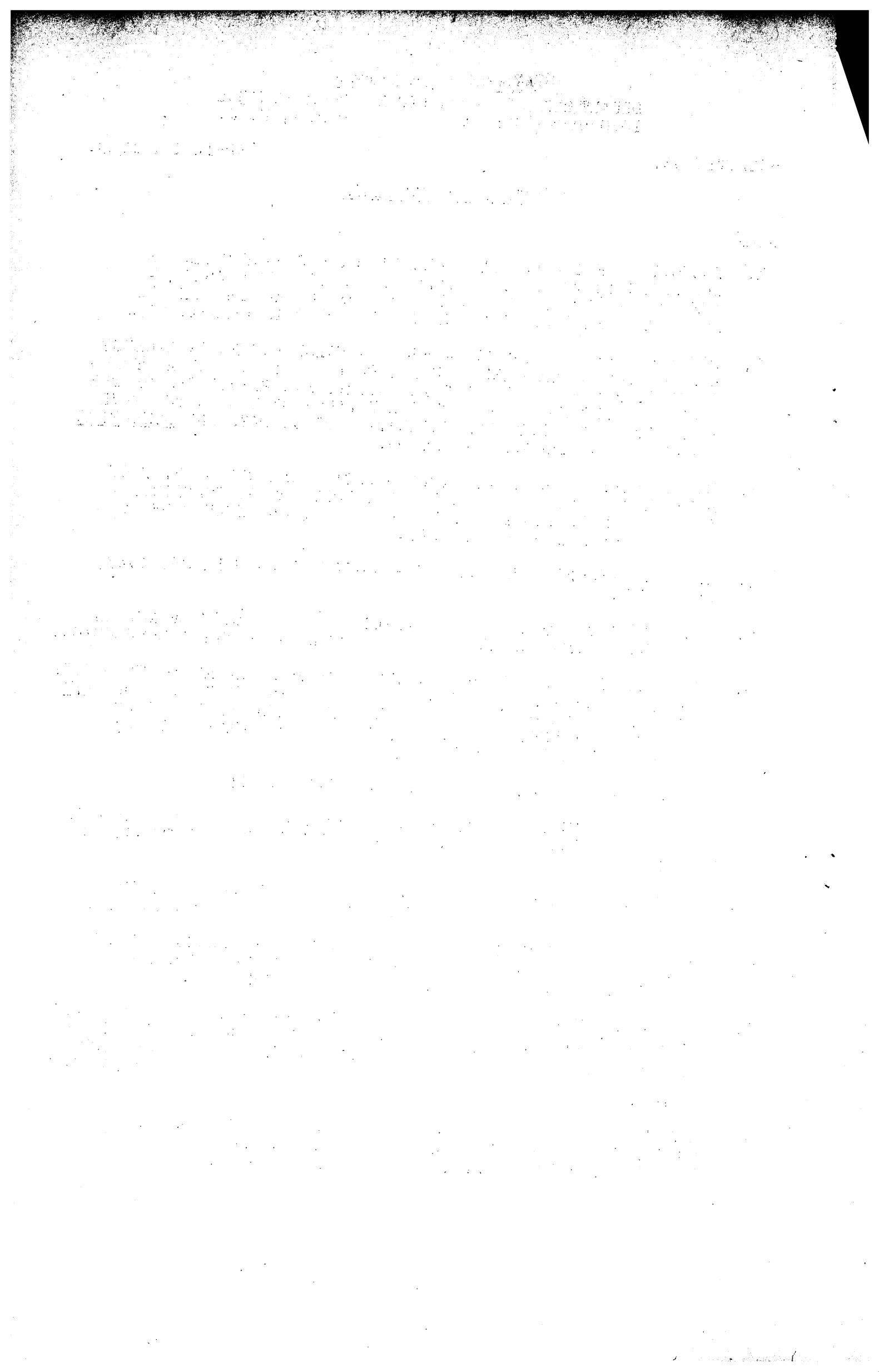
BULLETIN 561

APRIL 14, 1943.

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

BULLETIN 561

APRIL 14, 1943.

1. PROMOTION OF TEMPERANCE - HEREIN CONTEMPORARY COMMENTS APPEARING IN THE PUBLIC PRESS IN THREE "DRY" STATES - (THE OPINIONS EXPRESSED ARE THOSE OF THE AUTHORS AND DO NOT NECESSARILY REFLECT THE OPINION OF THIS DEPARTMENT).

HOW DRY ARE THE "DRY" STATES?

Three States are now "dry" - Kansas, Oklahoma and Mississippi.

Kansas

The Topeka, Kansas, Daily Capital (Feb. 25) - Quoting Representative W. H. Towers of Wyandotte: "Our citizens could find liquor spots in a blackout." The same publication quotes Representative John McManus of Cherokee: "In my district is made some of the best liquor in the United States - and we don't have to advertise it."

The Great Bend, Kansas, Tribune (Feb. 18) - "From the cattle days to the present, liquor has been freely dispensed in Wichita. To deny it would be the voice of ignorance speaking. The same may be said of many Kansas towns." This newspaper also quotes a Wichita business man as saying: "The present arrangement is ideal for enforcement officers. It offers each officer a splendid rake-off from every bootlegger in his bailiwick, and the pay-off is cash on the barrel head."

The Salina, Kansas, Journal (Feb. 11) - "Apparently our citizens will take a drink and will patronize night spots regardless of past state expressions at the polls."

The Goodland, Kansas, News (Feb. 9) - "When bootleggers peddle their wares publicly, maintain places where booze is sold, have federal permits to sell, and when every kid of high school age can tell you where liquor can be bought, no officer can plead that he doesn't know. It's not just around the war plants that it's going on but in lots of communities far removed from war industries."

The Garden City, Kansas, Telegram (Feb. 8) - "About the only factor restraining drinking in Sedgwick County or other Kansas areas is the price of whiskey... It is the story of nation-wide prohibition on a smaller scale and it is not a pretty thing."

Oklahoma

The Oklahoma City, Oklahoma, Oklahoman (Feb. 21) - Quoting Governor Kerr: "Liquor...dives are operating 'wide open' in Picher... The liquor dives are selling whiskey to anybody, including girls and boys of any age."

The Tulsa, Oklahoma, Tribune (Feb. 11) - "Corn whiskey bootlegging is developing into a lucrative racket - almost as good as it was in Tulsa during national prohibition, Sgt. Wade Foor of the raiding squad said today."

The Nowata, Oklahoma, Star (Jan. 31) - "A five-man crew of county officers swooped down on two private homes in South Coffeyville shortly after dark Saturday night and came up with 350 pints of whiskey and other assorted liquors."

The Bartlesville, Oklahoma, Examiner (Jan. 31) - "Members of the Sheriff's force, accompanied by Federal agents Friday night staged a liquor raid on the Little pasture about three miles south

of Ramona and found a 110-gallon still in operation and nabbed about 1,100 gallons of mash and 35 gallons of whiskey."

The Oklahoma City, Oklahoman (Jan. 8) - "The biggest liquor seizure of the new year in Oklahoma City took place Thursday night when officers of the police department vice bureau captured more than 23 cases, or 570 pints, of assorted brands of whiskey in the 100 block Northwest Seventh Street."

Mississippi

The Commercial Dispatch, Columbus, Mississippi, reports:

"Here in Mississippi liquor runs wild.

"There is no semblance of control.

"It is in the hands of bootleggers and the lawless element.

"It is under cover and in darkness.

"It is building up disrespect for law and order.

"Wouldn't it be eminently better to bring the stuff out in the open and exercise some sort of control over it?"

* * * * *

New Jersey

In New Jersey, the Alcoholic Beverage Control Law provides, (R. S. 33:1-3):

"It shall be the duty of the commissioner to supervise the manufacture, distribution and sale of alcoholic beverages in such a manner as to promote temperance and eliminate the racketeer and bootlegger."

* * * * *

- 2. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - AIDING AND ABETTING A NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT UPON EXPIRATION OF 30 DAYS AND BONA FIDE CORRECTION OF ILLEGAL SITUATION.

In the Matter of Disciplinary Proceedings against)
)
 JOHN YURICK, SR.,)
 T/a Johnny's,) CONCLUSIONS
 Northerly side of State Highway #10,) AND
 about 625' easterly of Jefferson Road,)
 Malapardis, Hanover Township,)
 P. O. Whippany, R. D., N. J.,) ORDER
)
 Holder of Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Hanover.)

 Frank C. Scerbo, Esq., Attorney for Defendant-Licensee.
 Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads non vult to the following charges:

"1. In your application, filed with the Township Committee of the Township of Hanover and upon which you obtained your current plenary retail consumption license, you stated 'Yes' in answer to Question 30 in said application, which asks: '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?', and then stated that 'John Yurick, Jr. is the manager', whereas in truth and fact the said John Yurick, Jr. was the real and beneficial owner of the licensed business; said false statement being in violation of R. S. 33:1-25.

"2. From 1937, and until the present time, you knowingly aided and abetted John Yurick, Jr. to exercise, contrary to R. S. 33:1-26, the rights and privileges of your plenary retail consumption license in the Township of Hanover, thereby yourself violating R. S. 33:1-52."

The file discloses that defendant, in 1937, purchased the tavern fixtures from his former tenant who had become involved in financial difficulties. Defendant thereafter had the license transferred to himself. He stated, however, that he was the proprietor of a grocery store and could not devote the necessary time to the tavern. He therefore turned over the business to his son, John Yurick, Jr., retaining the license in his own name. Counsel for defendant-licensee corroborated in substance the data contained in the department file. He asserts that there was no intention on the part of the defendant to violate the law.

There is nothing in the record to indicate that the retention of the liquor license in the name of the defendant was for the purpose of perpetrating a fraud on the issuing authority. It appears that the arrangement was regarded by father and son as a family affair. Defendant apparently desired to have some control over the son's activities in so far as the licensed premises were concerned and wanted the additional security of having the license in his name. The licensee apparently is qualified to retain the license in his own name. The son is not. An adverse ruling relative to the eligibility of the son to engage in the alcoholic beverage industry is filed contemporaneously herewith. Re Case No. 488, Bulletin 561, Item 3.

Technical "front" cases involving the non-disclosure of the interest of close members of a family who were fully qualified in their own right in the absence of an intent to deceive or defraud have been followed by comparatively mild penalties where correction has been made. In Re Sowa, Bulletin 437, Item 9. However, in view of my ruling effective July 1, 1942 regarding "front" cases and the further fact that the son who was the beneficial owner of the business had been convicted of a crime that involved moral turpitude since the issuance of the current license, a substantial penalty is indicated herein. Re Luker, Bulletin 423, Item 7. The license will be suspended for the balance of the term. This suspension may, however, be lifted upon proof of a bona fide correction after a period of thirty days of the suspension has been served.

Accordingly, it is, on this 5th day of April, 1943,

ORDERED that Plenary Retail Consumption License C-7, heretofore issued to John Yurick, Sr., trading as Johnny's, for premises Northerly side of State Highway #10, about 625' easterly of Jefferson Road, Malapardis, Hanover Township, P. O. Whippany, R. D., N. J., by the Township Committee of the Township of Hanover, be and the same is hereby suspended for the balance of its term, effective April 9, 1943, at 2:00 A. M., and it is further

ORDERED that if it satisfactorily appears, on verified

petition and proper proof, that the "front" herein has been fully and properly corrected, the said suspension may be lifted, provided, however, that in no event shall such suspension be lifted prior to the expiration of thirty (30) days from the effective date of the suspension.

ALFRED E. DRISCOLL,
Commissioner.

3. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CRIME OF RECEIVING STOLEN GOODS FOUND TO INVOLVE MORAL TURPITUDE - APPLICANT HELD INELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

April 5, 1943.

Re: Case No. 488.

On June 5, 1942, applicant pleaded guilty to the sale of alcoholic beverages to minors. As a result of this offense a fine of \$100. was imposed upon him. The records of this Department show that the applicant herein sold beer to two girls who were 16 years of age and one 18 years of age. In view of applicant's subsequent record it is not necessary for me to determine whether or not this particular offense involves the element of moral turpitude.

On November 5, 1942, applicant pleaded not guilty to the charge of receiving stolen goods. However, on November 23, 1942, he retracted his former plea and entered a plea of non vult. A fine of \$100. was imposed upon him for this offense. At the hearing applicant disclaimed knowledge of the fact that the seven tires purchased by him had been stolen. The seller, he states, informed him that he was purchasing used tires which had not been registered in accordance with the decree of the Office of Price Administration. In fact, the tires were new and unused. I am satisfied that applicant, an apparently intelligent person, was a willing party to this dishonest transaction. The crime of receiving stolen goods ordinarily involves moral turpitude. Re Case No. 200, Bulletin 554, Item 3; Re Case No. 169, Bulletin 479, Item 6; Re Case No. 292, Bulletin 344, Item 12 and sundry cases cited therein. No facts were presented at the hearing taking the instant case out of the category of a crime involving moral turpitude.

It is recommended, therefore, that applicant be advised that he is not eligible to hold a liquor license nor to work for a liquor licensee in the State of New Jersey.

Clarence E. Kremer,
Attorney.

APPROVED:

ALFRED E. DRISCOLL,
Commissioner.

4. SALES TO MINORS - "LEGGINGS" - NOTICE OF JANUARY 28, 1943, ABROGATED.

April 8, 1943.

TO ALL RETAIL LICENSEES IN ATLANTIC AND CAPE MAY COUNTIES:

The previous order issued by the District Coast Guard Officer of the Fourth Naval District, requiring a Coast Guardsman under the age of 21 to wear leggings while on liberty, as set forth in my release of January 28, 1943 (Bulletin 550, Item 10), has been rescinded. Coast Guardsmen under the age of 21 will no longer wear leggings when on liberty.

Licensees must continue to exercise strict diligence to avoid the sale of alcoholic beverages to any person under the age of 21 whether or not in uniform.

The only safe rule to follow is: "When in doubt, do not serve." Licensees should adhere to the procedure outlined in R. S. 33:1-77. In every instance they should request prospective patrons who appear to have reached that stage in life where there may be some reasonable question as to whether they are under or over twenty-one years of age, to either submit proof positive of their age or to represent in writing, over their respective signatures, that they are in fact twenty-one or over. In addition, it is to be noted that those seeking to establish a valid defense to a charge involving the sale of liquor to a minor must prove: (a) that the minor falsely represented in writing that he or she was twenty-one years of age or over, (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one years of age or over; and (c) that the sale was made in good faith, relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one years of age or over. R. S. 33:1-77, as amended P.L. 1939, c. 228.

ALFRED E. DRISCOLL
Commissioner

5. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN COLORING MATTER, SOLID AND ACIT CONTENT - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)
ALICE MAY FORNATARO,)
t/a Columbia Hotel,)
106 Broadway)
Long Branch, N. J.,)
Holder of Plenary Retail Consumption License C-32, issued by the Board of Commissioners of the City of Long Branch, and transferred during the pendency of these proceedings to)
JOSEPH W. and ALICE MAY FORNATARO,)
for the same premises.)

CONCLUSIONS
AND
ORDER

Alice May Fornataro, Pro Se.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee was served with a charge alleging that she possessed a quart bottle of "Calvert Reserve Blended Whiskey" and a 4/5th quart bottle of "Four Roses A Blend of Straight Whiskies", both of which contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

On October 14, 1942, Federal agents tested 19 bottles of defendant's open liquor stock and seized the two bottles in question. Upon analysis by the Federal chemist, he found that both bottles differed substantially from genuine samples in solid

petition to lift the suspension, upon proof of a correction of the unlawful situation, after a lapse of thirty days from January 26, 1943, the date upon which the suspension became effective. Re Weiss & Rubin, Inc., Bulletin 550, Item 2.

The corporation has now submitted a verified petition from which it appears that, in view of the recent amendment to section 25 of the Alcoholic Beverage Law (P.L. 1943, c. 46) dispensing with the requirement of five years residence, both Mr. and Mrs. Rubin, who have resided in this state since June 1940, are now fully qualified to hold more than 10% of the corporate stock. It further appears therein that Mr. Rubin now holds 50% of the stock, Mrs. Rubin holds 49% of the stock, and 1% of the stock is held by a qualifying shareholder. The local issuing authority has been notified, in accordance with the provisions of R. S. 33:1-34, of such changes in stock ownership.

Since it now appears that the unlawful arrangement has been fully corrected, and that more than thirty days have elapsed from the effective date of the order suspending the license, I shall order the suspension to be lifted.

Accordingly, it is, on this 6th day of April, 1943,

ORDERED that the suspension heretofore imposed against plenary retail distribution license D-10, issued by the Mayor and Council of the Borough of Palisades Park to Weiss & Rubin, Inc. for premises 236 Broad Ave., Palisades Park, be lifted and such license is hereby restored to full force and operation, effective immediately.

ALFRED E. DRISCOLL
Commissioner

7. APPELLATE DECISIONS - ROSEMAN v. ATLANTIC CITY.

HARRY ROSEMAN,)	
Appellant,)	ON APPEAL
-vs-)	CONCLUSIONS AND ORDER
BOARD OF COMMISSIONERS OF)	
THE CITY OF ATLANTIC CITY,)	
Respondent.)	
-----)	

Emerson L. Richards, Esq., Attorney for the Appellant.
Samuel Backer, Esq., Attorney for the Respondent.

BY THE COMMISSIONER:

This appeal is from respondent's denial of appellant's application for transfer of plenary retail consumption license C-199 from premises at 300 North North Carolina Avenue to premises at 731 Boardwalk, in Atlantic City.

A plenary retail consumption license for the North North Carolina Avenue location was originally obtained by appellant in 1938 and has since been renewed annually. At the boardwalk address to which transfer is sought, appellant has been engaged in the restaurant business since about August 15, 1942.

Appellant filed his application for transfer of premises on August 18, 1942. Counsel for appellant and for respondent appeared

before me on January 26, 1943, at which time appellant offered a petition of appeal praying:

1. That the Commissioner entertain the appeal notwithstanding the failure of respondent to decide an application for transfer pending before it since August 18th;
2. That the transfer be granted;
3. That a temporary permit be issued for premises at 731 Boardwalk, Atlantic City.

Counsel for respondent represented that appellant's application would be disposed of by the Atlantic City Board of Commissioners at their forthcoming meeting on January 28th. After hearing arguments pro and con, I advised Counsel that I would hold the petition in abeyance pending the action or inaction of the Board of Commissioners. On January 28, 1943, the Board adopted a resolution denying appellant's application, the vote for such denial being: Ayes (4); Nays (0).

The preamble to the Board's resolution recites that "... the Board of Commissioners is of the opinion that the best interests of the municipality will be subserved by a refusal of the said application..."; and that "...the Board of Commissioners feels that there is no public need for the licensing of premises at 731 Boardwalk in this municipality, and that the said neighborhood is already sufficiently served by an adequate number of licensed premises..." Further, respondent's answer to appellant's petition and amended petition of appeal states that "To grant the application for a transfer to the petitioner would be against the best interests of the municipality and of its inhabitants and visitors."

Appellant contends in the amended petition of appeal the respondent's action in denying the application for transfer was "arbitrary, capricious, and not in the exercise of a proper discretion." In support of this contention, the amended petition states that transfers to other locations on the boardwalk have been granted since appellant's application was filed.

At the hearing, appellant testified that the premises sought to be licensed is a store 90 feet deep and approximately 15 feet wide, containing counters, restaurant equipment and stools. He stated that his intention is to have no bar but to serve alcoholic beverages only with meals. Regarding the type of restaurant operated on the premises, appellant's testimony indicated the principal service to be of the sandwich and short-order variety; that hot foods are served on weekends; and that full-course meals are not prepared. Isaac D. Sinderbrand, the real estate broker who negotiated the lease for appellant's boardwalk premises, testified that in his opinion a license for the premises would, at the present time, be a convenience to the public. Testimony by Thomas J. Sweeney, the City's Inspector in charge of licenses, revealed that divers plenary retail consumption licenses are outstanding in the vicinity of appellant's boardwalk premises; that while most of these establishments have been occupied by the army, several are still in operation, specifically: one on Virginia Avenue approximately three blocks distant; one on Connecticut Avenue, about two blocks distant; and another at Pacific and New Jersey Avenues, some 675 feet distant.

Testifying as witnesses for respondent were the following: Thomas D. Taggart, Mayor of Atlantic City; Major James W. Richardson, Provost Marshall of the Army Air Forces Technical Training Command in Atlantic City; Thomas F. Caffrey, President of the

Atlantic City Beverage Association; Alvin Hunsiker, President of the Atlantic City Hotelmen's Association; Adrian Phillips, a member of the executive committee and stockholder and bondholder of Leeds and Lippincott Co., owners of Chalfonte-Haddon-Hall Hotel; F. W. Amstutz, Secretary of the Atlantic City Chamber of Commerce; and Mr. Chenowith, City Superintendent of Schools. These witnesses were all of the opinion that the granting of a license to appellant would not be in the best interests of the City or its inhabitants. Mayor Taggart stated that it has been the policy of the City officials "to keep down the number of licenses on the boardwalk"; and that in his opinion, "the neighborhood is adequately serviced by an adequate number of like establishments". Major Richardson testified that the military authorities "do not desire any more licenses or saloons on the boardwalk.....". The boardwalk is very convenient to us because it is possible for the families to meet and see the men on the boardwalk, and the less saloons the better the impression."

I am convinced that the Board of Commissioners, despite an apparently inordinate delay in passing upon appellant's application, exercised a reasonable discretion and acted in the best interest of the public in denying the transfer to appellant's boardwalk premises. The evidence fails to show any public need for another licensed establishment in the area concerned. The issuance of a liquor license does not carry with it an absolute right to a transfer to other premises. It is at all times subject to the condition that such transfer may be denied whenever an issuing authority, in the exercise of a reasonable discretion, deems such denial necessary for the public interest. Donovan v. South River, Bulletin 537, item 2. In view of the large concentration of military and naval personnel in and about Atlantic City, I am particularly impressed with the testimony herein that the license transfer would not serve the needs of the military authorities; but, instead, that so far as the army is concerned, there are already too many licensed places on the boardwalk. It is my considered opinion that the action of the Board of Commissioners should be affirmed. Cf. DiGirolamo v. North Hanover, Bulletin 543, item 6.

There is a further matter which, though not essential to my determination of these proceedings, is nevertheless pertinently related thereto. During the hearing on appeal, respondent moved to amend the answer by adding, as a further ground for denial of the application, "that the entrance to 731 Boardwalk is within 300 feet of another existing license; and therefore in contravention of the ordinance which controls this matter". The Hearer denied respondent's motion to amend its answer at that late stage in the proceedings, but allowed questions and answers on the subject of the City's "300 feet" ordinance - for the information of the Commissioner. The City Inspector in charge of licenses testified that on September 3, 1942 and December 17, 1942, respectively, (after appellant's application had been filed), the Board of Commissioners granted place-to-place transfers of two plenary retail consumption licenses: one from a place on the boardwalk to a location on the boardwalk a short distance away; the other, from premises not on the boardwalk to a place close to the boardwalk. The latter transfer was granted after the licensee's premises had been taken over by the military authorities. The License Inspector testified, further, that the entrance to appellant's premises at 731 Boardwalk is located 158 feet from the nearest entrance to the St. Charles Hotel which has been taken over by the military authorities but for which a plenary retail consumption license, though presently unused, remains outstanding.

According to the records of this Department, the Board of Commissioners of Atlantic City, on August 27, 1942, adopted an amendatory ordinance reading in part as follows:

"Section 7. No plenary retail consumption or plenary retail distribution license, except renewals of licenses presently outstanding, shall be issued for, or transferred to any premises within three hundred feet of premises for which a license of either type is outstanding; provided, however, that in case the building covered by any such license, is completely demolished, a transfer may be granted as above provided, or a transfer may be granted to other premises within three hundred feet of said demolished premises, even though the said other premises be within three hundred feet of premises for which a license of either type is outstanding; and provided further, that in case the building covered by any such license is taken over and used or occupied by the armed forces of the United States of America, a transfer may be granted as above provided, or a transfer may be granted to the same licensee to other premises even though the said other premises be within three hundred feet of premises for which a license of either type is outstanding, and after such transfer be granted, the licensee shall thereafter be bound by the aforesaid three hundred feet restriction."

It appears that the transfer sought by appellant would be barred by the provisions of the operative ordinance - that the ordinance, alone, would be a sufficient reason and ground for denial. Significantly, one of the aforementioned place-to-place transfers granted by the Board of Commissioners came within the exception provided for in the ordinance; and the other was granted for premises apparently further than 300 feet from premises for which a license was outstanding. Thus, on the face of the record, there is nothing to indicate that the Board of Commissioners has attempted to apply the ordinance so as to discriminate against appellant.

The action of respondent is affirmed.

Accordingly, it is, on this 8th day of April, 1943,

ORDERED that the appeal be and the same is hereby dismissed.

ALFRED E. DRISCOLL
Commissioner

8. DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - GOOD CONDUCT FOR FIVE YEARS LAST PAST AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

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

CONCLUSIONS
AND
ORDER

Case No. 262.
-----)

BY THE COMMISSIONER:

Petitioner in this proceeding prays that his disqualification resulting from the conviction of a crime be lifted pursuant to R. S. 33:1-31.2.

In 1917 petitioner was found guilty of embezzlement and was sentenced to thirty days in the Newark City jail. He was released after serving fifteen days of the imposed sentence. His conviction followed the discovery of an alleged shortage in his accounts while he was employed as an insurance agent. The petitioner stated that the trouble arose when the company had a drive on collection of debit accounts which were in arrears. Not being successful in his attempt to collect the arrearages and wishing to make a good showing, he applied current account payments to past due accounts. An unexpected check-up of his debit book disclosed a shortage in his accounts.

At the hearing three character witnesses, an employee of a large department store, a lawyer and a former judge, appeared and testified. All three have known the petitioner for more than five years and were unanimous in their opinion that the petitioner is now and has been for more than five years last past reliable, honest and law-abiding. The former judge stated that the petitioner has for many years done part-time investigation work for his law office. Petitioner has been for many years employed by the company for which he is presently working.

According to the report of the Director of Public Safety of the city in which petitioner resides, there have been no complaints concerning petitioner's conduct since the last offense committed, nor does the record disclose any pending investigations.

I, therefore, conclude that petitioner has been law-abiding for at least five years last past, that he has lived a respectable and law-abiding life, and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 8th day of April, 1943,

ORDERED that petitioner's disqualification be lifted in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL
Commissioner

9. DISCIPLINARY PROCEEDINGS - ORDER ENTERED FEBRUARY 2, 1943, SUSPENDING EMPLOYMENT PERMIT FOR BALANCE OF TERM MODIFIED.

In the Matter of Disciplinary Proceedings against)

FRANK R. RICHARD)
(FRANK R. RICHARDS),)
57 Park Avenue,)
Caldwell, New Jersey,)

On Petition

O R D E R

Holder of Employment Permit No.)
1494 issued by the State Com-)
missioner of Alcoholic Beverage)
Control.)

-----)
George R. Sommer, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

On February 2, 1943, I suspended Employment Permit No. 1494 issued by me to Frank R. Richard (Frank R. Richards) for the balance of its term, effective on February 5, 1943. Petitioner herein prays that said suspension be lifted.

Because of the recent amendment to R. S. 33:1-25 (P.L. 1943, c. 46), the petitioner, who has resided in New Jersey since May 1940, no longer requires an employment permit to enable him to work upon licensed premises. However, in order to remove any doubt as to his right to hold stock in a licensed corporation during a period of suspension of the employment permit heretofore issued to him, I shall grant his request and enter an order formally lifting said suspension.

Accordingly, it is, on this 8th day of April, 1943,

ORDERED that the suspension of Employment Permit No. 1494, issued by me to Frank R. Richard (Frank R. Richards) be and the same is hereby lifted, effective immediately.

ALFRED E. DRISCOLL
Commissioner

10. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - SALE OF ALCOHOLIC BEVERAGES IN VIOLATION OF R. S. 33:1-12 - 20 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

MATTEO D'ADDETTA,)
404 Madison Street,)
Hoboken, N. J.,)

CONCLUSIONS
AND
ORDER

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

Cyril J. McCauley, Esq., Attorney for Defendant-Licensee.
Richard C. Gossweiler, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee pleaded not guilty to a charge alleging that he falsely stated in his current license application that he conducted no business other than the sale of alcoholic beverages on his licensed premises, whereas in truth and fact he conducted a grocery and confectionery business upon his licensed premises, in violation of R. S. 33:1-25.

R. S. 33:1-12, pursuant to which the defendant's license was issued, provides, among other things, that "...this license shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which a grocery...or other mercantile business is carried on."

The licensed premises, according to defendant's current application, consists of a store located on the ground floor of a three-story building. The store is separated into two rooms by a partition containing a connecting door. There is a front entrance to the store and also an entrance from the hallway of the building directly to the rear room of the store.

Between 1937 and 1942, the defendant, although describing the licensed premises somewhat ambiguously in his various applications, purported to limit the licensed premises to the rear room

of the store. In January 1937, ABC agents, on routine inspection, observed that, in the front room, the licensee was operating a small grocery and confectionery business and instructed him that the connecting door in the partition, which they had found open, must be kept locked. Several later investigations disclosed that this instruction was being followed. However, in October 1940, this door was again found open and it was learned that access was had through this door by patrons of the licensed premises. The licensee was once more warned against permitting the connecting door to remain open and he was directed to appear at the office of this Department. When he appeared at the office, he was specifically told by an ABC inspector that his customers were not permitted to enter the licensed premises through the connecting door, but that this door could be used only by the licensee and his employees.

No further violation was discovered until October 1942 when two ABC agents, on visiting the premises, observed the sale of confectionery in the front room of the store. They also entered the rear room through the connecting door and were there each served a bottle of beer by the licensee. This beer was obtained from an ice-box located in the front room. On two other occasions, one in October and the other in November 1942, the agents encountered the same situation at the licensed premises.

Since, in the defendant's current application, the entire store containing both rooms is described as the licensed premises by the licensee, there was no reason for keeping the connecting door closed after July 1, 1942. However, the licensee still persisted, contrary to R. S. 33:1-12, in conducting a grocery and confectionery business in the front room which, ever since July 1, 1942, constituted part of the licensed premises.

At the hearing, the licensee testified that he had shortly before disposed of all of his groceries, candy and ice-cream and that he no longer conducted any other unlawful mercantile business on his premises. An investigation made by an ABC agent confirmed this statement. It appears, therefore, that the licensed premises, now consisting of the entire first floor of two rooms, are being operated in accordance with the law.

The persistent disregard of the many admonitions given to this defendant relative to the manner in which his business was being conducted, warrants a substantial penalty. Cf. Re Schey, Bulletin 458, Item 7, where, in the absence of correction, the license was suspended for the balance of the term with leave to petition to lift after thirty days. In that case, however, the conduct of the licensee appears to have been more contumacious than that of this defendant. Under all the circumstances, I shall suspend the license for a period of twenty days.

In view of the foregoing disposition, the cancellation proceedings brought against this licensee upon the theory that the license was improvidently issued because of the other mercantile business being conducted on the licensed premises, is hereby dismissed.

A cautionary word is in order. This licensee now fully understands that the only other business that may be maintained on his licensed premises is the sale of cigars and cigarettes as an accommodation to patrons and the sale of accessory non-alcoholic beverages. R. S. 33:1-12. No further consideration will be given to this licensee in the event that it is hereafter ascertained that any other prohibited mercantile business is

being carried on in or upon his licensed premises. If any such further violation is uncovered, proceedings will be instituted to the end that the license be revoked outright. A word to the wise is sufficient!

Accordingly, it is, on this 8th day of April, 1943,

ORDERED that Plenary Retail Consumption License C-38, heretofore issued by the Board of Commissioners of the City of Hoboken to Matteo D'Addetta for premises 404 Madison Street, Hoboken, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 A.M. April 12, 1943, and terminating at 2:00 A.M. May 2, 1943.

ALFRED E. DRISCOLL
Commissioner

- 11. DISCIPLINARY PROCEEDINGS - SUSPENSION FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT AFTER EXPIRATION OF 30 DAYS AND CORRECTION OF ILLEGAL SITUATION - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR MORE THAN 30 DAYS - APPLICATION TO LIFT GRANTED.

In the Matter of Disciplinary Proceedings against)

CALDWELL WINE & LIQUOR CO., INC.,
471 Bloomfield Avenue,
Caldwell, New Jersey,)

On Petition

O R D E R

Holder of Plenary Retail Distribution License D-7 issued by the Mayor and Council of the Borough of Caldwell.)

George R. Sommer, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

On February 2, 1943, I suspended defendant's license for the balance of its term effective February 5, 1943, after finding that Dolores Bader and Frank R. Richards were the beneficial owners of all of the corporate stock of the Caldwell Wine & Liquor Co., Inc. At that time Frank R. Richards was disqualified from owning more than ten per cent of the stock of a licensed corporation because he had not resided in the State of New Jersey for a period of five years. The order of suspension provided that, if a correction was thereafter effected by a bona fide sale and transfer, application might be made to me for lifting of said suspension provided at least thirty days had elapsed from the effective date of said suspension. Re Caldwell Wine & Liquor Co., Inc., Bulletin 553, Item 3.

Caldwell Wine & Liquor Co., Inc. has presented a petition wherein it is set forth that fifteen shares of the authorized capital stock of said corporation are issued and outstanding; that thirteen of these shares have been issued to Frank R. Richards, one share to Dolores Bader and one share to Louis Bader. The petition further sets forth that Frank R. Richards has lived in the Borough of Caldwell, New Jersey, since May 1940, and that Dolores Bader and Louis Bader reside in New York City. There has also been presented to me a supplementing affidavit which recites that Frank R. Richards is now fully qualified to hold a liquor license in his individual name in this State, and that notification

of the change of the corporate set-up has been sent to the local issuing authority in accordance with the provisions of R.S.33:1-34.

Under the recent amendment to R.S. 33:1-25 (P.L. 1943, c. 46), the residential disqualification which previously existed against Frank R. Richards has been removed. Since it appears that he is now eligible to own more than ten per cent of the stock of a licensed corporation, I shall consider the former unlawful arrangement as having been corrected.

Thirty days of the suspension heretofore imposed have already expired.

Accordingly, it is, on this 8th day of April, 1943,

ORDERED that the suspension heretofore imposed be lifted, effective immediately, and that Plenary Retail Distribution License D-7, issued to Caldwell Wine & Liquor Co., Inc. by the Mayor and Council of the Borough of Caldwell, be restored to full force and operation.

ALFRED E. DRISCOLL
Commissioner

12. DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - GOOD CONDUCT FOR FIVE YEARS LAST PAST AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION TO LIFT GRANTED.

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

CONCLUSIONS
AND
ORDER

Case No. 261
-----)

BY THE COMMISSIONER:

Petitioner herein was previously declared ineligible for employment by a liquor licensee in this State. Re Case 312, Bulletin 387, Item 6. He now prays that his disqualification resulting from the conviction of a crime be lifted. R.S. 33:1-31.2.

Petitioner seems to have been involved in a number of minor crimes, first when he was about fifteen and last when he was about twenty-two. As the result of the latter series of crimes he was sentenced on December 16, 1936 to 18 months in the Essex County Penitentiary but by virtue of commutation of the sentence was discharged on December 24, 1937. There is apparently no further criminal record against the applicant since that time although the police records show that he was held for investigation in October 1938 but was discharged the same day, no formal complaint having been made.

The series of crimes concluding in the petitioner's arrest and sentence were largely caused by bad association. He has lived in the community where he now resides all his life. Since his release he has married and has one child and has settled down to a regular occupation and apparently become a responsible, law-abiding citizen.

Petitioner at the time of the eligibility hearing was found to be working for a New Jersey licensee. Since the date

of the eligibility hearing he has been compelled to accept short-term employment and advises me that he can go back to his former employers. The truth of this fact was testified to by the officials of his union.

A co-worker, two of his union officials and an attorney-at-law appeared as character witnesses. One of the union officials has known petitioner since boyhood and knows his entire family and further is a public official of the community wherein petitioner resides. The attorney has practiced in the said community for thirteen years and is well acquainted both in a business way and socially with the petitioner and his family. These witnesses, all of whom have known petitioner for longer than six years, testified that they consider him a law-abiding citizen and that he bears such a reputation in the neighborhood wherein he resides and among his associates and that they feel his employment by a liquor licensee in this State would in no wise be undesirable or contrary to the public interest. All witnesses seem to agree that he has completely rehabilitated himself.

I find that the petitioner has conducted himself in a law-abiding manner during the five years immediately past and that his association with the alcoholic beverage industry will not be contrary to the public interest.

It is, therefore, on this 9th day of April, 1943,

ORDERED that petitioner's disqualification because of the previous finding of moral turpitude be removed and he is hereby declared eligible for employment by a liquor licensee.

Alfred E. Eniscoll
Commissioner.

CHECKED BY No. 5