

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

BULLETIN 469

JULY 17, 1941.

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STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
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BULLETIN 469

JULY 17, 1941.

1. DISCIPLINARY PROCEEDINGS - SALES OF ALCOHOLIC BEVERAGES TO MINORS -
PRIOR CONVICTION OF SALE TO MINOR AND POSSESSION OF ILLICIT
LIQUOR - 40 DAYS' SUSPENSION.

EVIDENCE - SALES TO MINORS - AMOUNT OF CORROBORATION REQUIRED.

ALCOHOLIC BEVERAGE - WHAT CONSTITUTES - BEER PRESUMED TO BE AN
ALCOHOLIC BEVERAGE.

In the Matter of Disciplinary)
Proceedings against)

VITO LA CORTE,)
294 Fifteenth Avenue,)
Newark, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-409 issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark for the fiscal year expiring)
June 30, 1941, and presently oper-)
ating under Special Permit)
No. AI-179 issued by the Acting)
Commissioner of Alcoholic)
Beverage Control.)

Mario V. Farco, Esq., Attorney for Defendant-Licensee.
Richard E. Silberman, Esq., Attorney for Department of Alcoholic
Beverage Control.

The defendant pleads not guilty to charges which, in short,
allege that the defendant sold and served alcoholic beverages to
minors at his tavern in violation of the Statute and State Regula-
tion. See R. S. 33:1-77; Rule 1 of State Regulations No. 20.

Heretofore, in a previous disciplinary proceeding, this De-
partment on August 16, 1940 found the defendant guilty of selling an
alcoholic beverage to an eighteen year old girl at the tavern (his
bartender doing the selling) and also of possessing illicit liquor
there, whereupon his license was suspended for twenty days commencing
August 19, 1940, at 3:00 A.M. See Re LaCorte, Bulletin 420, Item 4.

The present proceeding relates to the evening of August 18,
1940, the last night before such suspension began. On that evening a
group of six young colored folk entered the tavern, four being
minors - viz., Mae McCloud, then 15 years old; Flora Robinson, then
17 years old; Benjamin Smith, 17 years 6 months; and George Carpenter,
19 years 4 months. The other two persons in the group, Leonard and
"B.J." Gilmore, were 21 and 23 years of age respectively.

The Department's case rests upon the testimony of the four
minors. It appears, from such testimony, that "B.J." and three of
the minors, viz., Mae, Flora and Benjamin, seated themselves at a
table while Leonard and George, the fourth minor, remained standing
by the door; that a colored waiter, "Buddy," served three rounds of
beer to the group at the table, Benjamin ordering the first round,

"B.J." ordering another round, and "Al," a person whom Benjamin met outside the tavern and who came to join them for a while, ordering the third round; that, during the drinking, George came over from the door and had a glass and a half of the beer that was served to Flora.

Although the defendant and "Buddy" deny that the minors were even in the tavern on this occasion, and although the defendant further contends that the testimony of the minors should not be deemed worthy of belief, I am satisfied that the related facts actually occurred. I see no reason for believing that the minors were, nor is any reason implied why they should be, lying at the hearing. Indeed, it appears that the whole affair as to the drinking was brought to light only because Mae's foster mother, on seeing the girl come home so late at night on the occasion in question, finally learned from her where she had been and thereupon made a complaint to the Newark authorities.

Although there may perhaps be doubt as to whether the minors have correctly identified the particular person who served them, their testimony is adequately clear that they were actually at this tavern on the occasion in question and were there served the various rounds of beer.

The defendant contends, however, that, in any event, there is insufficient evidence that the drinks which were served were actually alcoholic. Such contention is without merit. The statute defines an alcoholic beverage as being, inter alia, "Any fluid...suitable for human consumption, and having an alcoholic content of more than one-half of one per cent by volume, including...beer." R. S. 33:1-1(b). The testimony of the minors shows that "beer" was specifically ordered and that the waiter returned with drinks pursuant to such order. Presumably, the usual beer, which, as I may judicially notice, contains more than one-half of one per cent by volume, was served on this occasion. See Lewinsohn v. United States, 278 F. 421, 425, 426 (CCA 7, 1921). Also see State v. Marks, 65 N.J.L. 84, 87 (Sup. Ct. 1900).

Nor is there merit to the defendant's further contention that he cannot, on the same set of facts as to the minors, be charged with violating both the statute and the State regulation. It is elementary that there may be, as here, a statutory provision prohibiting sales (and service) of alcoholic beverages to minors and also a State regulation, promulgated by this Department, seeking to effectuate the general purpose of that statutory provision. That the same set of facts may constitute a violation of both the statute and the regulation is wholly immaterial.

Hence, I find the defendant guilty as charged.

As to penalty: In view of the defendant's past record, already mentioned, and in view of the youth of the minors in his present violation, the youngest being a girl barely fifteen at the time, the defendant's license will, as penalty for such present offense, be suspended for full forty days. Such a suspension should convince the defendant that the provision in the statute and in the State regulations prohibiting sale or service of alcoholic beverages to minors is to be strictly obeyed.

This proceeding, though instituted during the last licensing year (which expired June 30, 1941), does not abate, but remains effective against the special permit under which the defendant is presently operating pending determination by the Newark Board of Alcoholic Beverage Control on his application for renewal of his license

for the current licensing year, and also remains effective against that application for renewal. See State Regulations No. 15, and Re Finkel, Bulletin 338, Item 7.

Accordingly, it is, on this 9th day of July, 1941,

ORDERED, that Special Permit No. AI-179, heretofore issued by the Acting Commissioner of Alcoholic Beverage Control to Vito LaCorte for 294 Fifteenth Avenue, Newark, be and the same is hereby cancelled, effective July 11, 1941, at 3:00 A.M. (Daylight Saving Time), and that no renewal or other license may be issued to Vito LaCorte or for said premises prior to August 20, 1941.

E. W. GARRETT,
Acting Commissioner.

2. DISCIPLINARY PROCEEDINGS - GAMBLING BY PLAYING SHUFFLEBOARD FOR DRINKS - 5 DAYS' SUSPENSION - PERMITTING A KNOWN PROSTITUTE AND IMMORAL ACTIVITIES ON THE PREMISES - CHARGES DISMISSED.

In the Matter of Disciplinary Proceedings against
JULIA M. DOYLE,
463-467 New Jersey
Railroad Ave.,
Newark, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-799 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark for the fiscal year expiring June 30, 1941, and presently operating under Special Permit No. AI-178 issued by the Acting Commissioner of Alcoholic Beverage Control.

Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Daniel G. Kasen, Esq., Attorney for Defendant-Licensee.

Licensee pleaded not guilty to the following charges:

"1. On or about January 22, 1941, and divers days prior thereto, you allowed, permitted and suffered gambling in that you permitted playing shuffleboard for drinks on or about your licensed premises in violation of Rule 7 of State Regulations No. 20.

"2. On or about January 22, 1941, and divers days prior thereto, you allowed, permitted and suffered one 'Marie', a known prostitute, in and upon your licensed premises in violation of Rule 4 of State Regulations No. 20.

"3. On or about January 22, 1941, and divers days prior thereto, you allowed, permitted and suffered immoral activities in or about your licensed premises in violation of Rule 5 of State Regulations No. 20."

As to (1): The evidence shows that on January 8, 1941 two investigators of this Department played shuffleboard at the licensed premises against a team composed of one of licensee's bartenders known as Mike and a patron named Charlie, the latter being referred to by Mike at the "house man." It appears that Mike asked one of the investigators if he and the other investigator would like to play shuffleboard, and, responding in the affirmative, the investigator asked Mike, "What are we playing for?", to which the bartender replied, "We are going to play for drinks." At least four games were played, all of which were lost by the investigators, who, after each game, ordered and paid for drinks for themselves and the victorious team.

Playing shuffleboard for drinks constitutes gambling within the intendment of Rule 7 of State Regulations No. 20. Re Polster, Bulletin 388, Item 10. I find the licensee guilty as charged.

As to (2) and (3): The only evidence on these charges came from an investigator who testified that on January 8, 1941: "I spoke to Mike regarding one of the girls, and I asked Mike, 'Who is she?' He told me that her name was 'Marie'. I asked Mike, 'Does she lay?' He said, 'I don't know.'" He further testified that, on January 22, 1941: "When I went in I said to Mike, 'Where is Marie?' He said, 'She will be in any minute.' In a few minutes she didn't come in, and I said, 'Listen, Mike, how much does she charge for a lay?' Mike answered, 'How the hell do I know, I am not doing the laying, I don't know anything about her.' I said, 'You don't know whether she is clean or not?' and he said, 'If she wasn't clean, she would not be here.'" It further appears that, shortly after this conversation, Marie entered the premises and the investigator made an appointment to meet her the next night, which appointment was not kept. This conversation did not occur in the bartender's presence.

Although Mike did not testify at the hearing, the licensee denied that Marie was a prostitute or was engaged in any immoral activities on the licensed premises.

Charges that a licensee has permitted known prostitutes and immoral activities on licensed premises are of the utmost seriousness, and, if proven by competent evidence, may properly result in revocation of the license. Because of the nature of the charges, however, they must be established by affirmatively satisfactory evidence. A guilty finding may not be based upon mere suspicions, no matter how reasonably inferable such suspicions may be. Weiss v. Newark, Bulletin 164, Item 8; (Re Foster and Clauss, Bulletin 248, Item 4). As was said in the latter case:

"However, fairness to the licensee and the interests of justice demand that a finding of guilt be based on credible affirmative testimony -- mere suspicions, no matter how reasonable, will not suffice."

See also Re Silidker, Bulletin 405, Item 5, where similar charges were dismissed on evidence no less cogent than appears in the case at bar.

The testimony here does not meet the aforesaid standard as to the character of the proof required to sustain the charges in question. It is absolutely devoid of anything to indicate that any immoral activities took place on the licensed premises. Again, while it may well be that the bartender's answers to the investigator's inquiries were purposefully artful in order to camouflage an actual knowledge on his part that Marie was a prostitute, the evidence does not, nevertheless, justify a finding that Marie was known to him or the licensee to be a prostitute, or that she was, in fact, a prostitute at all.

In this posture of the record, charges (2) and (3) must be dismissed.

Licensee argues that charge (1) is vague and indefinite because the date of January 8, 1941 was not therein mentioned, and because the names of the persons who participated in the game are not stated. The argument is, essentially, in the language of her attorney, that "any charge lodged by this Department against a licensee should be framed with the particularity and definiteness that an indictment must be framed when found by a grand jury." A sufficient answer to this contention is that the Alcoholic Beverage Law (R. S. 33:1-70) provides:

"It shall not be necessary in any affidavit, information, complaint or indictment involving a sale of alcoholic beverages to give the name of the purchaser thereof, and it shall not in any affidavit, information, complaint or indictment be necessary to include any defensive negative averments, but it shall be sufficient to state the act or acts constituting the violation and that the same was or were then and there prohibited by law, saving, however, to all defendants the right to require a bill of particulars as in other cases."

As to the date, the rule was laid down in State v. Shapiro, 89 N.J.L. 319, by the Court of Errors and Appeals that where the date is not of the essence of the offense it is not necessary to prove that it was committed on the date laid in the indictment, and that it was open to the State to offer proof that the offense charged was committed on any day within the period covered by the statute of limitations.

The purpose of a charge in disciplinary proceedings is merely to apprise the licensee of the violation alleged to have been committed. This the charge in this case reasonably does. There is no claim that licensee was in anywise misled by the charge, or that she was surprised by any of the testimony given thereunder. No request was made by her for an opportunity to have Mike, the bartender, produced in order to refute the evidence given by the investigator.

Under all of the circumstances, I find the charge in question sufficiently clear and definite.

The license will be suspended for five days.

This proceeding, though instituted during the last licensing year (which expired June 30, 1941), does not abate, but remains effective against the special permit under which the defendant is presently operating pending determination by the Newark Board of Alcoholic Beverage Control on her application for renewal of her license for the current licensing year, and also remains effective against that application for renewal. See State Regulations No. 15, and Re Finkel, Bulletin 338, Item 7.

Accordingly, it is, on this 9th day of July, 1941,

ORDERED, that Special Permit No. AI-178, heretofore issued by the Acting Commissioner of Alcoholic Beverage Control to Julia M. Doyle for 463-467 New Jersey Railroad Avenue, Newark, be and the same is hereby cancelled, effective July 14, 1941, at 3:00 A.M. (Daylight Saving Time), and that no renewal or other license may be issued to Julia M. Doyle or for said premises prior to July 19, 1941.

E. W. GARRETT,
Acting Commissioner.

3. ACTIVITY BY QUARTERLY PERIODS FOR THE FISCAL YEAR 1940-41.

To: E. W. Garrett, Acting Commissioner

	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter			Totals
	Jul.	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	
<u>ARRESTS</u>													
Licensees		2		4			0			2			8
Permittees		0		0			7			0			7
Persons not holders of licenses or permits		91		67			63			73			294
Total number		93		71			70			75			309
<u>SEIZURES</u>													
<u>Stillis</u>													
1 to 50 gallon capacity		19		8			9			7			43
Over 50 gallon capacity		12		17			15			5			49
Total number		31		25			24			12			92
<u>Motor Vehicles</u>													
Trucks		2		3			1			2			8
Passenger cars		15		9			10			7			41
Total number		17		12			11			9			49
<u>Alcohol</u>													
Beverage Alcohol (Gals.)		392		232			281			16.60			921.60
Mash													
Total Number Gallons		11980		58648			20755			24265			115648
<u>Alcoholic Beverages</u>													
Beer, Ale, etc. (Gals.)		697		50			35			26.15			808.15
Wine (Gals.)		1159		1823			890			1272.92			5144.92
Whiskies and other hard liquor (Gals.)		525		410			133			318.55			1386.55
<u>RETAIL INSPECTIONS</u>													
Licensed premises inspected		4950		5288			5763			5675			21676
Illicit (bootleg) liquor		29		24			56			37			146
Gambling violations		14		17			64			38			133
Sign violations		65		59			80			42			246
Unqualified employees		629		435			253			305			1622
Other mercantile business		23		15			15			5			58
Disposal permits necessary		38		28			11			8			85
"Front" violations		22		14			18			7			61
Improper beer markers		9		13			12			3			37
Other violations found		24		34			62			18			138
Total violations found		853		639			571			463			2526
Number of bottles gauged		48184		45027			53185			48974			195370
<u>STATE LICENSEES</u>													
Plant Control inspections completed		340		203			84			281			908
License applications investigated		38		30			26			649			743
<u>COMPLAINTS</u>													
Investigated and closed		790		626			726			889			3031
Investigated, pending													455*
<u>LABORATORY</u>													
Analyses made		360		305			346			418			1429
Alcohol and water and artificial coloring cases		69		55			47			49			220
Poison and denaturant cases		2		2			5			0			9
<u>HEARINGS HELD</u>													
Appeals							** 23			31			54
Disciplinary proceedings							89			67			156
Seizures							24			32			56
Eligibility							29			31			60
Application for special permit							0			2			2
Objections to issuance of license							0			5			5
<u>PERMITS ISSUED</u>													
Unqualified employees							** 1035			1557			2592
Home manufacture of wine							259			7			266
Solicitors							269			261			530
Social affairs							611			961			1572
Disposal of alcoholic beverages							199			163			362
Miscellaneous permits							295			220			515
Total							2668			3169			5837

* Pending at end of fiscal year

** Reported data included, starting January, 1941

Respectfully submitted,

S. J. MacINTOSH,
Inspector.

4. THE NOISE NUISANCE AND REMEDY RESTATED - FULL COOPERATION ESSENTIAL - HEREIN OF PHONETICS AND DISTURBANCES - "HOROBLE DETALES OF YUNG GURLS SKRIMING."

Always with the summer comes the lilt of the tavern lark and the strain of the sidewalk sot. The throaty "blues" singer warms up her number or a juke box blares its nickel's worth. Laughter loud and often raucous. The unshunnable whiskey tenor.

To the good neighbor who must sleep in readiness for the tasks of coming day these disturbances can be insufferable. Occurring late in the night they may be indescribably annoying. Persisting night after night they may be unbearable and vex to the breaking point the most tolerant disposition.

Commiserate with this free-lance phoneticist as he complains:

"Will you please se and do som thing about this Tavern Place -----.

"I am his Landlord and I living myself over the salone and one more famely living hir! One time famely moving out be course it is horoble to much nois late all most every nighths. Also to meni yung womens skriming all nighths. To much mashin noise music til 2 or 3 or 4 clock mornings!

"I told him you are wrong and it dont men eniting with him! He is to much and smart? I told our Mayor and I told Police and it dont work. So he must to have very good paletision pull in Town. He is doing eniting he pleases making nuisances eni time! All I wanted is more reasonable much more gwiter that we culd stay in our own haus and having little of sliping in nighths. I am presed to make this complaints to you Mr. Garrett. Please you teaching this Mr.----- how to runing the tavern place.

"I hope you make my wish satisfatorelis and if you wish more detales I am willing cooperatet whit you eni time."

This complainant needs help and will get it. The first requisite in our program of assistance has been met - the complainant's name and address is given. Anonymous letters about noise are futile: They go into the waste basket. See Bulletin 342, Item 10.

Written consent of complainant to use of the name is requested, if not already granted. If given, the good offices of this Department are employed to bring together the complainant and the licensee so that they may give reasonable consideration to the alleged nuisance. It is a gratifying fact that the large majority of noise complaints are adjusted as the result of such contacts.

The problem is a sensitive one. Noise is evasive and capricious: It is here now, then gone, to return at an unpredictable moment. It has a personal quantum: What is noise to one - and deeply irritating - may have no effect upon another. Apparently there is general recognition of these truths and a disposition more often than not to play the game the fair way - to see eye to eye.

A complaint occasionally baffles solution at this point. Department investigators must then establish listening posts near the licensed premises to test whether the alleged noises actually occur. Charges may be preferred, disciplinary proceedings held and testimony taken under oath. If the complainant is found to be supersensitive, the charges will be dismissed. Should the licensee be found at fault, the license privilege may be conditioned appropriately or suspended or revoked.

Regulations 20, Rule 5, forbids a licensee to allow upon licensed premises any disturbances, brawls or unnecessary noise, or to permit the place to be conducted in such manner as to become a nuisance. The rule was made to be obeyed. This Department will take every reasonable step to adjust a bona fide noise complaint. In your first letter help us to help you by giving your name and address.

E. W. GARRETT,
Acting Commissioner.

July 10, 1941.

5. ELIGIBILITY - POSSESSION OF LOTTERY SLIPS - NOT MORAL TURPITUDE - APPLICANT NOT DISQUALIFIED BY SUCH CONVICTION.

July 11, 1941

Re Case No. 385

In November 1936, applicant was arrested on the charge of assault and battery. In December 1936, in police court, the Judge reserved decision in the case and the matter has remained in that status to date.

In December 1940 applicant was arrested on the charge of possessing lottery slips, later convicted, fined \$150.00 and placed on probation for three years.

Applicant states that he wrote "numbers" totaling between \$60.00 and \$75.00 per week for a period of six weeks, upon the suggestion of an acquaintance that he could earn some extra money; that this was the first time he engaged in such activities; that his commission amounted to between \$10.00 and \$15.00 a week, and that he discontinued writing "numbers" after his arrest.

The dormant assault and battery case in the police court is not a conviction of a "crime" within the meaning of R.S.33:1-25,26. As to applicant's conviction on the lottery charge, it does not involve moral turpitude, since it appears that he was a minor employee and not a ringleader in the gambling activities. Re Case No. 354, Bulletin 435, Item 2; Re Case No. 382, Bulletin 463, Item 9.

It is recommended, therefore, that applicant be advised that he is not disqualified by statute from holding a liquor license or being employed by a liquor licensee in this State.

Harry Castelbaum,
Attorney.

APPROVED:
E. W. GARRETT,
Acting Commissioner.

6. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING THE INTEREST OF ANOTHER - AIDING AND ABETTING A NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - STEWARD INTERESTED IN CLUB LICENSE - FRANK ADMISSION AND SITUATION CORRECTED - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against LAKE HOPATCONG YACHT CLUB, Bertrand Island, Mt. Arlington, N. J., Holder of Club License CB-2, issued by the Mayor and Council of the Borough of Mt. Arlington. -----)

CONCLUSIONS AND ORDER

Lake Hopatcong Yacht Club, by T. David Gibb, Commodore. Robert R. Hendricks, Esq., Attorney for Department of Alcoholic Beverage Control.

Licensee has pleaded guilty to charges of falsifying its license application by denying that any person other than itself is interested in such application or in the business to be conducted thereunder, and also aiding and abetting a non-licensee to exercise the rights and privileges of its license.

It appears that as part of the contract of hire made by the licensee with its steward for last year, it was agreed that the steward was to keep all profits from the sale of alcoholic beverages and also be responsible for any losses resulting therefrom; that a portion of the license fee was paid by the steward. In effect, this arrangement gave the steward a prohibited interest in the license.

At the hearing, the Commodore of the licensee club testified that the aforementioned steward was no longer associated with it and that a new contract was to be entered into with another steward who would receive a flat wage for his services and that the said steward would have no interest whatsoever either in the receipts from the sale of alcoholic beverages, or in the license. A copy of this new contract forwarded to this Department subsequent to the hearing corroborates the testimony of the Commodore.

In view of the guilty plea, the frank admission of the unlawful situation, and its correction, I shall suspend the license for ten days. Cf. Re Club Parsippany, Inc., Bulletin 411, Item 8.

Subsequent to the institution of these proceedings, the above mentioned license has expired and has been renewed by the issuance of club license CB-1 for the present fiscal year. Such renewal license is subject to the suspension imposed herein. State Regulations No. 15.

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

ORDERED, that Club License CB-1, heretofore issued to Lake Hopatcong Yacht Club for premises at Bertrand Island, Mt. Arlington, N. J., by the Mayor and Council of the Borough of Mt. Arlington for the present fiscal year, be and the same is hereby suspended for ten (10) days, effective July 14, 1941, at 3:00 A.M. (Daylight Saving Time).

E. W. GARRETT, Acting Commissioner.

7. DISCIPLINARY PROCEEDINGS - UNLAWFUL USE BY NON-LICENSEE OF ANOTHER'S LICENSE - LICENSE TRANSFERRED AND SITUATION CORRECTED - 2 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)
)
 FRANK GAMBLIN COMPANY,)
 Route #2,)
 Lodi, N. J.,)
)
 Holder of Plenary Retail Consumption License C-15, for the fiscal year 1940-41, issued by the Borough Council of the Borough of Lodi.)
 -----)

CONCLUSIONS AND ORDER

Licensee appearing by Robert Rodrigues, Vice-president.
G. George Addonizio, Esq., Attorney for Department of Alcoholic Beverage Control.

Licensee pleaded guilty to the following charge:

"From on or about December 5, 1940 and until December 20, 1940, you, not being the licensee, exercised, attempted to exercise, and held yourself out as authorized to exercise the rights and privileges of the license of Bert Arnold prior to its transfer to you, in violation of R. S. 33:1-26."

Licensee was incorporated on December 5, 1940. On the same day, it took over actual operation of the business then licensed in the name of Bert Arnold. It continued to operate under Arnold's license until December 20, 1940, when the license was actually transferred to its name. Since December 20, 1940 it has been lawfully operating under the transferred license and has renewed said license for the present fiscal year.

The sole question concerns the penalty to be imposed.

Licensees must learn not to "jump the gun" by taking over actual operation of the licensed business before the license has been transferred. Under all the circumstances of this case, I shall suspend the license for two (2) days.

Since the institution of these proceedings, the license in question has expired and has been renewed by the issuance of License C-15.

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

ORDERED, that Plenary Retail Consumption License C-15, issued for the current fiscal year to Frank Gamblin Co., trading as The Oasis (being the name in which the license was renewed), by the Borough Council of the Borough of Lodi, be and same is hereby suspended for a period of two (2) days, effective July 15, 1941, at 3:00 A.M. (D.S.T.).

E. W. GARRETT,
Acting Commissioner.

8. DISCIPLINARY PROCEEDINGS - HOSTESSES - ENTERTAINER EMPLOYED TO DRINK WITH CUSTOMERS - 20 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary)
 Proceedings against)
)
 BUD HOLDING COMPANY,)
 177 Clinton Avenue,)
 Newark, N. J.,)
)
 Holder of Plenary Retail Con-)
 sumption License C-857 for the)
 licensing year expiring June 30,)
 1941, and now holder of Plenary)
 Retail Consumption License C-888)
 for the current (1941-42) licensing)
 year; both licenses having been)
 issued by the Municipal Board of)
 Alcoholic Beverage Control of the)
 City of Newark.)
 -----)

CONCLUSIONS AND ORDER

Saul C. Schutzman, Esq., Attorney for Defendant-licensee.
 Robert R. Hendricks, Esq., Attorney for Department of Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to a charge of permitting a female employee to accept drinks at the expense of customers and patrons, in violation of Section 2 of Ordinance No. 8024, adopted by the Board of Commissioners of the City of Newark on July 10, 1940.

The Department file on this matter shows that on the evening of October 24, 1940 two investigators entered the above licensed premises and sat at the bar; that shortly thereafter Olive Koda (also known as Olive Kavanagh and Sunny Lane), an entertainer employed on the licensed premises, joined the investigators and drank with them, and at their expense, for the duration of the evening. The investigators, in their reports, state that Miss Koda repeatedly urged them to buy drinks for her and for another female; that, on one occasion, Miss Koda asked one of the investigators to permit her to order drinks (at his expense) for Francis Shober, President of the defendant-licensee, and a male companion who was sitting with Mrs. Shober at the bar, "so that she (Miss Koda) could keep her job."

On October 25, 1940 the investigators, accompanied by officers of the Newark Police Department, returned to the licensed premises, where they found Miss Koda drinking, at the bar, with a patron, and obtained a statement from her. In her statement Miss Koda stated that since September 1, 1940 she had been employed on the licensed premises as a singer at a weekly salary of \$18.00; that when she was hired she had been told that she "would have to drink with the customers whenever they asked me"; that, the evening before, she had accepted several drinks at the expense of the Department investigators; and that, on numerous other occasions, she had accepted drinks which had been paid for by tavern patrons.

On October 26, 1940 Francis Shober and Michael Umont, President and Secretary, respectively, of the defendant-licensee, pleaded guilty, in Police Court, to charges of having permitted a female employee to accept drinks at the expense of a customer, in violation of the aforesaid Newark ordinance, and were each fined \$25.00. The fact that officers of the defendant-licensee have been tried and fined, in

Police Court, for the same offense now being considered in the instant disciplinary proceeding, is no bar to the latter proceeding.
Re Messina and Ruisi, Bulletin 392, Item 12.

Except for the fact that the female employee in the instant case apparently received a salary instead of a percentage on the drinks solicited by her, the case, otherwise, is representative of the usual hostess set-up. Under all the circumstances, I shall suspend the license for twenty days. In view of the guilty plea, five days of the said penalty will be remitted -- leaving a net penalty of fifteen days.

This proceeding, although instituted during the licensing term which expired June 30, 1941, does not abate but remains fully effective against the defendant's renewal license for the current (1941-42) term. State Regulations No. 15.

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

ORDERED, that Plenary Retail Consumption License C-888, heretofore issued to Bud Holding Company by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of fifteen (15) days, effective July 14, 1941, at 3:00 A.M. (Daylight Saving Time).

E. W. GARRETT,
Acting Commissioner.

9. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING THE INTEREST OF OTHERS - AIDING AND ABETTING NON-LICENSEES TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - SALES ON ELECTION DAY WHILE POLLS ARE OPEN - SALES DURING PROHIBITED HOURS ON SUNDAY - LICENSE REVOKED.

In the Matter of Disciplinary)
Proceedings against)
)
THOMAS DAVIS,)
T/a WEST SIDE CAFE,)
107 Prospect Ave.,)
Asbury Park, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-58 for the fiscal)
year 1940-41, issued by the City)
Council of the City of Asbury)
Park.)

O. Ernest Gatta, Esq., Attorney for Licensee.
Robert R. Hendricks, Esq., Attorney for Department of Alcoholic Beverage Control.

Licensee pleaded guilty to four charges, alleging in substance:

(1) That in his application for license dated June 15, 1940, he falsely stated that no other individual had any interest directly or indirectly in the license applied for or in the business to be conducted under said license, whereas in fact Mary Vacchiano or Samuel Vacchiano had such an interest, said false statement being in violation of R. S. 33:1-25;

(2) Since on or about July 1, 1940, he knowingly aided and abetted the said individuals to exercise the rights and privileges of his license in violation of R. S. 33:1-52;

(3) That on May 13, 1941, municipal election day, while the polls were open for voting, he sold and delivered alcoholic beverages to consumers in violation of Rule 2 of State Regulations No. 20;

(4) That on Sunday, May 25, 1941, at about 10:15 A.M., he sold alcoholic beverages at retail in violation of a resolution of the City Council of Asbury Park, which prohibits the sale of alcoholic beverages on Sunday between 5:00 A.M. and 12 o'clock noon.

The sole question concerns the penalty to be imposed.

Mary Vacchiano admits that she and her husband, Samuel Vacchiano, conducted the licensed business from July 1, 1940 until a few months prior to the expiration date of the license, at which time her husband turned the business over to her. The records of this Department show that Mary Vacchiano was convicted of violating the Alcoholic Beverage Control Act in 1934 and again convicted of violating the Control Act in 1936. Since it appears that she has committed two or more violations of the Act, she was ineligible to hold a license on July 1, 1940.

The files of this Department also show that Samuel Vacchiano was convicted in 1933 and again in 1936 of crimes which involved moral turpitude. Hence, he likewise was ineligible to hold a license on July 1, 1940.

It is apparent that the Vacchianos, knowing of their disqualification, deliberately arranged to obtain the license in the name of Thomas Davis. Despite the fact that the licensee pleaded guilty and the parties involved frankly disclosed the situation, the only proper remedy, under the circumstances of this case, is revocation. Re Agostino, Bulletin 382, Item 1; Re Alter and Weissman, Bulletin 412, Item 8; Re Eagle Cafe, Inc., Bulletin 431, Item 10.

The license being considered herein has not been renewed for the present fiscal year nor has any license been issued to date for the present fiscal year for said premises. Despite the fact that the license has expired, it will be revoked. State Regulations No. 15. This penalty will disqualify the licensee from holding or receiving any liquor license in this State for a period of two years from date hereof. R. S. 33:1-31.

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

ORDERED, that Plenary Retail Consumption License C-58 for the fiscal year 1940-41, issued by the City Council of the City of Asbury Park to Thomas Davis, T/a West Side Cafe, for premises located at 107 Prospect Avenue, Asbury Park, N. J., be and the same is hereby revoked.

E. W. GARRETT,
Acting Commissioner.

10. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING THE INTEREST OF ANOTHER - AIDING AND ABETTING A NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - INTEREST OF QUALIFIED PRINCIPAL CONCEALED APPARENTLY THROUGH ERRONEOUS ADVICE - FRANK DISCLOSURE AND SITUATION CORRECTED - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

STOCKTON HOTEL INC., 137 South Stockton Street, Trenton, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-67 for the fiscal year 1940-1941, issued by the Board of Commissioners of the City of Trenton.)

-----)

Joseph J. Felcone, Esq., Attorney for Licensee. Charles Basile, Esq., Attorney for Department of Alcoholic Beverage Control.

Licensee pleaded guilty to the following charges:

"1. In your application for license dated July 18, 1940, filed with the Board of Commissioners of the City of Trenton, upon which Plenary Retail Consumption License C-67 for the year 1940-41 was transferred to you, you falsely stated 'No' in answer to Question 28 therein, 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?', whereas in truth and fact Sam Ettinger had such an interest; said false statement being in violation of R. S. 33:1-25.

"2. Since on or about August 8, 1940 and until the present time, you knowingly aided and abetted Sam Ettinger, a non-licensee, to exercise the rights and privileges of your license contrary to R. S. 33:1-26, in violation of R. S. 33:1-52."

Licensee was incorporated July 12, 1940. Its stock was issued to the following individuals and stood in their names when proceedings were instituted:

- Manuel Kunis, 97 shares
Minnie Kunis, 2 shares
Manus Kunis, 1 share.

Sam Ettinger frankly admits that he was the true owner of the shares at all times. He testified that the shares were issued to the original holders thereof, who are respectively his nephew, sister and brother-in-law, because he was advised that he was disqualified from holding said shares solely by reason of the fact that he had not resided in New Jersey for five years. Since it appears that the premises are operated as a bona fide hotel and that Sam Ettinger is otherwise qualified, the advice seems to have been erroneous. R. S. 33:1-12.1.

After the hearing herein, all the shares were transferred to Sam Ettinger, or his nominees, and the local issuing authorities notified thereof in accordance with R. S. 33:1-34. The license has been renewed for the current fiscal year.

In view of the frank disclosure, the correction of the situation and the absence of aggravating circumstances, I shall suspend the license for ten (10) days. Re Silver Palm Corporation, Bulletin 422, Item 8.

Since the institution of these proceedings, the license has expired and has been renewed by the issuance of License C-67 for the present fiscal year.

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

ORDERED, that License C-67 for the present fiscal year, issued to Stockton Hotel, Inc. by the Board of Commissioners of the City of Trenton, be and the same is hereby suspended for ten (10) days, effective July 14, 1941, at 2:00 A.M. (D.S.T.).

E. W. GARRETT,
Acting Commissioner.

11. 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
IDA M. GARDELLA,
T/a GARDELLA'S WINES, BEER & LIQUORS,
1067 Avenue "C,"
Bayonne, N. J.,
Holder of Plenary Retail Consumption License C-92 (1940-41), C-92 (1941-42) issued by the Board of Commissioners of the City of Bayonne.
-----)

CONCLUSIONS
AND ORDER

Ida M. Gardella, Pro Se.
G. George Addonizio, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The defendant 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 Department file on this matter shows that on May 31, 1941 Mr. Gardella, husband of the licensee, sold a quart bottle of Wilson "That's All" Whiskey to an investigator for the price of \$2.50. The minimum consumer price at which quart bottles of this product could have been sold, lawfully, at that time was \$2.59. Bulletin 450.

The minimum penalty for sale below Fair Trade price is suspension of license for ten days. Re Koenig, Bulletin 463, Item 6. Since the instant offense is the defendant's first violation of record, the minimum penalty will be imposed. In view of the guilty plea, five days of said penalty will be remitted, leaving a net penalty of five days.

This proceeding, although instituted during the last licensing term which expired June 30, 1941, does not abate, but remains against defendant's renewal license for the current term. State Regulations No. 15.

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

ORDERED, that Plenary Retail Consumption License C-92, heretofore issued to Ida M. Gardella by the Board of Commissioners of the City of Bayonne, be and the same is suspended for a period of five (5) days, effective July 21, 1941, at 3:00 A.M. (Daylight Saving Time).

E. W. Garrett

Acting Commissioner.

