

BULLETIN 761

MAY 9, 1947.

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

BULLETIN 761

MAY 9, 1947.

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF REGULATIONS NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

PHILIP SCHLENGER
137 North Main Street
Paterson 2, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-12, issued by the
Board of Alcoholic Beverage Control
of the City of Paterson.

Philip Schlenger, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to a charge alleging the sale and delivery of alcoholic beverages in original containers for off-premises consumption on Sunday, in violation of Rule 1 of State Regulations No. 38.

On Sunday, March 23, 1947, an employee of the licensee, then in charge of the licensed premises, sold to an investigator of the State Department of Alcoholic Beverage Control two quart bottles of beer in their original containers for off-premises consumption.

The licensee has no previous adjudicated record. I shall suspend his license for the minimum period indicated for violations of this type -- fifteen days. Re VanHarken, Bulletin 678, Item 10, and remit five days thereof because of the plea, leaving a net suspension of ten days.

Accordingly, it is, on this 23rd day of April, 1947,

ORDERED that Plenary Retail Consumption License C-12, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Philip Schlenger, 137 North Main Street, Paterson, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. April 28, 1947, and terminating at 3:00 a.m. May 8, 1947.

ERWIN B. HOCK
Commissioner.

2. LICENSED PREMISES - ENTERTAINMENT - HEREIN OF THE DIFFERENCE BETWEEN MOVIES AND TELEVISION AT TAVERNS, THE FORMER BEING DISAPPROVED AND THE LATTER BEING TENTATIVELY ALLOWED.

April 23, 1947

John W. Parsons, Jr., Esq.
Atlantic City, N. J.

My dear Mr. Parsons:

I have before me your letter of April 16th inquiring whether it is permissible to operate a television set in a tavern.

Heretofore the Department has disapproved of any practice of showing motion pictures at taverns (Re Lowe, Bulletin 619, Item 5). However, while television and movies are similar in many respects, I can readily conceive of a substantial difference between them in so far as liquor control is concerned. Television does not entail any appreciable risk of indecent films or fire hazard, nor does it involve technical requirements which pertain to movies (R. S. 5:3-10 et seq.), all of which were elements taken into consideration when the Department disapproved of movies at taverns.

Because of this substantial difference, the Department thus far has not been interfering with television at taverns but has been experimentally waiting to see whether any abuses or dangers may be indicated. To date, I have had no occasion to disapprove of their use at taverns and whether they shall be allowed to continue in the future depends upon whether any problems arise which require their elimination.

In the interim, I must specifically warn all licensees who have television on their premises that:

(1) The premises must remain sufficiently lighted at all times,

(2) All necessary steps must be taken to insure that any minors who are attracted to the premises may not obtain or consume any alcoholic beverages there,

(3) Any and all municipal requirements or regulations must be strictly complied with.

Very truly yours,
ERWIN B. HOCK
Commissioner.

3. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA - CHARGE AS TO FALSE STATEMENT IN APPLICATION DISMISSED.

In the Matter of Disciplinary Proceedings against)

BASIL BROS. INC.)
92 E. Main Street)
Ramsey, N. J.,)

Holder of Plenary Retail Consump-)
tion License C-7 issued by the)
Mayor and Borough Council of the)
Borough of Ramsey, and transferred)
during the pendency of these)
proceedings to)

SAMUEL W. BASIL)
for the same premises.)
-----)

James M. Muth, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to the following charge:

"On November 13, 1946 you possessed illicit alcoholic beverages at your licensed premises, viz., one 4/5 quart bottle labeled 'Lord Calvert Blended Whiskey', which bottle contained alcoholic beverages not genuine as labeled; such possession being in violation of R. S. 33:1-50."

On November 13, 1946, an ABC agent seized on defendant's premises the bottle mentioned in the charge because the contents thereof appeared by his preliminary test to be not genuine as labeled. Subsequent analysis of the contents of the seized bottle by the Department chemist disclosed that the solids were substantially higher, the acids lower and the color darker than the solids, acids and color found in the contents of a genuine bottle of the same product. Defendant is guilty as to the charge preferred herein.

Defendant has pleaded not guilty to the following supplemental charge:

"2. In your application, filed with the Mayor and Borough Council of the Borough of Ramsey, and upon which you obtained your current plenary retail consumption license, you, after listing your stockholders as Samuel W. Basil 50 shares, Irene D. Basil 49 shares and Justin G. Basil 1 share, falsely stated 'No' in answer to Question 23, which asks: 'Has any corporation, partnership, association or individual other than the stockholders hereinbefore set forth any beneficial interest, directly or indirectly, in the stock held by said stockholders?', whereas in truth and fact one Peter D. Basil was the beneficial owner of the 49 shares of stock held by said Irene D. Basil; such false statement being in violation of R. S. 33:1-25."

Basil Bros. Inc. is a corporation of the State of New Jersey. It owns certain real estate and also held the license considered herein. Prior to June 1942 Peter D. Basil was the owner of 49 shares of said corporation. On June 2, 1942, Peter D. Basil pleaded guilty in the Criminal Judicial Court of the County of Bergen to the crime of tampering with a gas meter and was placed on probation for one year. Shortly thereafter, on the advice of counsel, he transferred the 49 shares of stock in defendant corporation to his wife, Irene D. Basil. The transfer apparently was without consideration. It appears also that at the same time Peter D. Basil ceased to take any active part in the operation of the licensed business and purchased a confectionery store and luncheonette, which he has operated since that time. The licensed business was thereafter conducted on behalf of the corporation by Samuel W. Basil, the owner of 50 shares of Basil Bros. Inc.

At the hearing herein, Peter D. Basil testified that there is no separate agreement between himself and his wife, Irene D. Basil, as to the ownership of the 49 shares, and that he has received no compensation or dividends from the corporation since 1942. Irene D. Basil testified that she is the sole owner of the 49 shares of the corporation. Since the institution of these proceedings, Samuel W. Basil has purchased from Basil Bros. Inc. personal property, fixtures, liquor stock and soda located on the licensed premises, and has obtained a transfer of the license from Basil Bros. Inc. to himself.

This is a close case involving a gift of the stock of defendant corporation by a husband to his wife. However, the Department has failed to establish that Peter D. Basil retained any interest in the stock after the gift was made nearly five years ago and, under the circumstances, I shall dismiss the supplemental charge.

As to the charge concerning the illicit liquor, it appears that defendant Basil Bros. Inc. has a prior record. Its license was suspended by the local issuing authority from November 29, 1938 to December 3, 1938, after defendant had pleaded guilty to possessing slot machines and permitting a lottery. Since it appears that defendant's record has been clear for more than eight years, I shall not take the prior suspension into consideration in fixing a period of suspension herein. Defendant's license will be suspended for a period of fifteen days, less five days for the plea, making a net suspension of ten days. Re Rudolph, Bulletin 680, Item 1; Re Gelb, Bulletin 741, Item 8.

Accordingly, it is, on this 25th day of April, 1947,

ORDERED that Plenary Retail Consumption License C-7, issued by the Mayor and Borough Council of the Borough of Ramsey to Basil Bros. Inc., for premises 92 E. Main Street, Ramsey, and transferred during the pendency of these proceedings to Samuel W. Basil for the same premises, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. May 5, 1947, and terminating at 2:00 a.m. May 15, 1947.

ERWIN B. HOCK
Commissioner.

4. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PURCHASING ALCOHOLIC BEVERAGES FROM UNLAWFUL SOURCE - LICENSE SUSPENDED FOR BALANCE OF TERM.

In the Matter of Disciplinary Proceedings against)

ARTHUR R. FITZGERALD)

30 Van Houten Street)

Paterson 1, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-360, issued by the Board of Alcoholic Beverage Control of the City of Paterson.)

Arthur R. Fitzgerald, Defendant-licensee, Pro Se.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to charges alleging (1) that he possessed illicit alcoholic beverages at his licensed premises, in violation of R. S. 33:1-50, and (2) that he purchased alcoholic beverages from a person who was not the holder of a New Jersey alcoholic beverage license, in violation of Rule 15 of State Regulations No. 20.

On January 13, 1947, an agent of the Alcohol Tax Unit, Internal Revenue Service of the United States Treasury Department seized a 4/5 quart bottle labeled "Cutty Sark Blended Scots Whisky" at the defendant's licensed premises when his field test thereof indicated that the contents of said bottle were not genuine as labeled.

Subsequent analysis of the contents of said bottle by a Federal chemist warrants the conclusion that said contents were not genuine "Cutty Sark" and in fact were merely diluted alcohol colored with a dye and slightly flavored in imitation of the real "Scotch" flavor. An examination of the bottle disclosed further that the Federal "strip stamp" (a stamp issued to denote payment of Federal taxes) on the bottle was counterfeit. Thus the contents of said bottle were illicit under at least two provisions of the State law. R.S. 33:1-88.

It appears that the above mentioned bottle was part of a case of "whisky" purchased by defendant from a non-licensee. The balance of the case has been sold at defendant's bar.

This violation of the Alcoholic Beverage Law herein described illustrates the danger a licensee may encounter when he buys alcoholic beverages contrary to the provisions of the law. There is no doubt that the seized bottle was "bootleg" liquor and, thus, it is reasonable to assume that all the "whisky" in the illegally purchased case was of the same kind.

"Bootleg" liquor has no place in law-abiding society and will not be tolerated on licensed premises. The seeming increase of cases of this kind within recent months is quite disturbing (see Re Gianatos, Bulletin 743, Item 4; Re Fortenbacher, Bulletin 745, Item 4). In these cases I suspended the licenses for ninety and sixty days, respectively. I now feel that, possibly, revocation is not too severe a penalty.

However, in view of defendant's heretofore unblemished record and so that all licensees may have fair warning of the seriousness with

which the "bootleg" problem is viewed, I shall, in the instant case, suspend the license for the balance of its term.

Accordingly, it is, on this 25th day of April, 1947,

ORDERED that Plenary Retail Consumption License C-360, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Arthur R. Fitzgerald, for premises 30 Van Houten Street, Paterson, be and the same is hereby suspended for the balance of its term, commencing at 3:00 a.m. May 1, 1947.

ERWIN B. HOCK
Commissioner.

5. DISCIPLINARY PROCEEDINGS - FAILURE TO HAVE VALID FEDERAL BASIC PERMIT - CHARGE DISMISSED BECAUSE IT APPEARED THAT PERMIT HAD NOT TERMINATED.

In the Matter of Disciplinary Proceedings against)

RESKOM IMPORT CO., INC.)
Room 307, 24 Commerce St.)
Newark 2, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Wholesale License)
W-62 and Warehouse Receipts License)
WR-21, issued by the State Commis-)
sioner of Alcoholic Beverage Control.)

Samuel M. Hollander, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Under date of September 12, 1946, the Federal Alcohol Tax Unit notified this Department that the Federal wholesaler's and importer's basic permits held by the defendant had automatically terminated.

On October 4, 1946, this Department instituted the present proceedings to suspend or revoke the defendant's State licenses on charges that the defendant no longer held any valid Federal basic permit. R. S. 33:1-31(e).

Under date of April 21, 1947, the Federal Alcohol Tax Unit notified this Department that, following a hearing at its office, it was decided that the defendant's Federal basic permits had not terminated.

Accordingly, it is, on this 24th day of April, 1947,

ORDERED that the charges herein be and the same are hereby dismissed.

ERWIN B. HOCK
Commissioner.

6. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT STILL PARTS ORDERED
FORFEITED - PADLOCKING WAIVED.

In the Matter of the Seizure on)
February 15, 1947 of still parts)
at 1 Clover Street, in the City)
of Newark, County of Essex and)
State of New Jersey.)

Case No. 7096

ON HEARING
CONCLUSIONS AND ORDER

Arthur A. Werthmann, Esq., Attorney for Stephan Pushko.
Seraphine A. Louis, Pro Se.
Harry Castelbaum, Esq., appearing for the Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 2 of the Revised Statutes, to determine whether certain still parts, described in a schedule attached hereto, seized on February 15, 1947 at 1 Clover Street, Newark, N. J., constitute unlawful property and should be forfeited and, further, to determine whether the premises should be padlocked.

It appears that Newark police officers, checking a complaint that there was an illicit still on the premises, found a dismantled still in a clothes closet in the second floor apartment of Seraphine A. Louis at the above address. Louis was arrested on charge of possessing unregistered still parts.

Louis gave the police a signed statement in which he seeks to claim that he purchased the still some twenty years ago in New Bedford, Massachusetts, and brought it with him when he came to Newark; that his wife used it from time to time to manufacture whiskey for her own use until her death in 1942 and that since then the still has not been used.

The State Department of Alcoholic Beverage Control was notified of the facts in the case and the still parts were turned over to the Department. The still or still parts were not registered with the State Commissioner of Alcoholic Beverage Control as required by R.S. 33:2-1, and consequently constitute unlawful property, subject to forfeiture. In addition, the premises are subject to padlocking. R. S. 33:2-5.

When the matter came on for hearing pursuant to R.S. 33:2-4, Seraphine A. Louis, the tenant, and Stephan Pushko, the owner of the premises, appeared and sought to avoid padlocking. They did not oppose forfeiture of the still parts.

Louis reiterated his explanation of the presence of the still in his apartment. He testified that he has resided in Newark for twenty years last past and occupied the apartment in question for the past eight or nine years; that he has remarried and resides at the apartment with his wife and child; that he has been employed as a porter, a hospital orderly and a watchman, and that he has never been convicted of any crime. He claims that it did not occur to him to destroy the still and that one of his sons with whom he is on unfriendly terms is responsible for the complaint against him. Whether Louis is guilty of a criminal offense because the still was in his apartment will be determined by the criminal court.

Although I do not accept at face value Louis' story as to when the still was last used or why he did not dispose of it, it is to be noted that it was a small, dust-covered still of the type used for home and not commercial manufacture of alcoholic beverages.

Mr. Pushko, the landlord, testified that he did not know that the still was in Louis' apartment and had no reason to suspect that it was there. He was uncertain whether he intended to permit Louis to remain in the apartment or evict him.

Under the circumstances, and in view of the current housing shortage, it would seemingly be unduly harsh to compel Louis and his family to vacate their home by ordering the premises padlocked. I shall therefore waive padlocking, leaving the landlord free to take whatever action he deems desirable. Cf. Seizure Case 6455.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property and that the same be and hereby is forfeited in accordance with the provisions of R.S. 33:2-5, and that it be retained for the use of hospitals and State, county and municipal institutions, or destroyed in whole or in part at the direction of the State Commissioner of Alcoholic Beverage Control.

Dated: April 28, 1947.

ERWIN B. HOCK
Commissioner.

SCHEDULE "A"

- 1 - 10-gallon copper cooker
- 1 - copper gooseneck, 10" by 4"
- 1 - 10-gallon cooler with 1/4" copper coil
- 1 - rubber hose approximately 15' long
with fittings

7. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - SALE OF ALCOHOLIC BEVERAGES TO NON-MEMBER - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

AMERICAN LEGION, MONMOUTH POST #54
62 West Main Street
Freehold, N. J.,

CONCLUSIONS
AND ORDER

Holder of Club License CB-158, issued
by the State Commissioner of Alcoholic
Beverage Control.

Charles F. Dittmar, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to a charge alleging that on March 22, 1947, it sold alcoholic beverages to a person not a bona fide member or a bona fide guest of a member of its club, in violation of Rule 8 of State Regulations No. 7.

The departmental file discloses that on the day in question an ABC investigator, not a member of defendant's club, entered defendant's premises and, without being questioned, was served with two glasses of beer.

In the absence, as here, of any previous record, the usual minimum suspension of fifteen days will be imposed. Re Penns Grove Lodge, etc., Bulletin 615, Item 2. Five days will be remitted for the plea entered herein, leaving a net suspension of defendant's license for a period of ten days.

Accordingly, it is, on this 29th day of April, 1947,

ORDERED that Club License CB-158, issued by the State Commissioner of Alcoholic Beverage Control to American Legion, Monmouth Post #54, for premises 62 West Main Street, Freehold, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. May 5, 1947, and terminating at 2:00 a.m. May 15, 1947.

ERWIN B. HOCK
Commissioner.

8. APPELLATE DECISIONS -- PLIKAYTIS v. HARRISON - APPLICATION FOR WRIT HAVING BEEN DENIED, ORDER ENTERED REINSTATING SUSPENSION.

WALTER W. PLIKAYTIS, t/a PETE'S TAVERN,)	
)	
Appellant,)	
-vs-)	ON APPEAL
)	O R D E R
TOWN COUNCIL OF THE TOWN OF HARRISON,)	
)	
Respondent)	
-----)	

BY THE COMMISSIONER:

It appearing that by Conclusions and Order herein dated March 10, 1947, the suspension of 120 days imposed against appellant's license by the respondent was affirmed (Bulletin 754, Item 1), and

It further appearing that, by Order dated March 18, 1947, the said suspension was stayed to permit the appellant to apply to a Justice of the New Jersey Supreme Court for a writ of certiorari to review said Conclusions and Order, and

It further appearing that such application was denied by Justice Parker and a Rule dismissing said application was signed by said Justice on April 18, 1947;

It is, on this 30th day of April, 1947,

ORDERED that the 120-day suspension by respondent of appellant's Plenary Retail Consumption License C-70, for premises 751 Harrison Avenue, Harrison, issued by the Town Council of the Town of Harrison, is hereby restored, and the said license be suspended for the balance of its term, to commence at 2:00 a.m. May 12, 1947; and it is further

ORDERED that if any license be issued to the appellant, or to any other person for the same premises for the 1947-48 licensing year, such license shall be and remain under suspension until 2:00 a.m. September 9, 1947.

ERWIN B. HOCK
Commissioner.

ACTIVITY REPORT FOR APRIL, 1947

9.

ARRESTS:

Licensees and Employees - - - - -	3	Bootleggers - - - - -	1
Total number of persons arrested - - - - -			4

STILLS:

Fifty Gallons and Under - - - - -	1	Over Fifty Gallons - - - - -	1
Total number of stills seized - - - - -			2
Brewed malt beverages - gallons - - - - -			2134.03
Wine - gallons - - - - -			5667.00
Mash - gallons - - - - -			300.00
Motor Vehicles			
Cars - - - - -	2	Trailers - - - - -	2

RETAIL LICENSEES:

Total number of premises inspected - - - - -			999
Total number of premises where alcoholic beverages were gauged - - - - -			637
Total number of bottles gauged - - - - -			10,464
Total number of premises where violations were found - - - - -			51
Total number of violations found - - - - -			65
Type of violations found:			
Gambling Devices - - - - -	7	Other Mercantile Business - - - - -	9
Prohibited Signs - - - - -	1	Disposal Permit Necessary - - - - -	3
Unqualified Employees - - - - -	10	Other violations - - - - -	4
Regulations #38 Sign Not Posted - - - - -	13	Illicit liquor - bottles - - - - -	18

STATE LICENSEES:

Premises inspected - - - - -	17
License applications investigated - - - - -	13

COMPLAINTS:

Complaints assigned for investigation - - - - -	270
Complaints investigated, reviewed and closed - - - - -	272
Investigations completed, not closed administratively - - - - -	7
Investigations assigned, not yet completed - - - - -	178

LABORATORY:

Analyses made - - - - -	114
"Shake-up cases (alcohol, water and artificial color - - - - - bottles - - - - -	5
Liquor found to be not genuine as labeled - - - - - bottles - - - - -	10

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made - - - - -	20
Persons fingerprinted for non-criminal purposes - - - - -	219
Identification contacts made with other enforcement agencies - - - - -	170
Motor vehicle identifications via N.J. State Police Teletype - - - - -	13

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities - - - - -	6
Violations involved:	
Sale to minors - - - - -	3
Conducting business as a nuisance - - - - -	1
Permitting gambling on premises - - - - -	1
Permitting hostesses on premises - - - - -	1
Permitting immoral activity on premises - - - - -	1
Permitting prostitutes on premises - - - - -	1
Possessing slot machines - - - - -	1
Sale during prohibited hours - - - - -	1
Sale to intoxicated persons - - - - -	1
Unqualified employees - - - - -	1

Cases instituted at Department - - - - -	18
Violations involved:	
Fraud and front - - - - -	4
Possessing illicit liquor - - - - -	4
Sale during prohibited hours - - - - -	4
Sale to intoxicated persons - - - - -	2
Sale under Fair Trade price - - - - -	2
Hindering investigation - - - - -	1
Permitting hostesses on premises - - - - -	1
Possessing indecent advertising matter - - - - -	1
Possessing slot machines - - - - -	1
Sale to non-members by clubs - - - - -	1
Transportation in unlicensed vehicle - - - - -	1
Unqualified employees - - - - -	1

Cases brought by municipalities on own initiative and reported to Department - - - - -	5
Violations involved:	
Permitting brawls - - - - -	3
Unqualified employees - - - - -	2
Furthering illegal activity - - - - -	1
Hindering investigation - - - - -	1
Permitting prostitutes on premises - - - - -	1
Sale during prohibited hours - - - - -	1
Sale to minors - - - - -	1

HEARINGS HELD AT DEPARTMENT:

Total number of hearings held - - - - -	48
Appeals - - - - -	15
Disciplinary proceedings - - - - -	18
Eligibility - - - - -	10
Seizures - - - - -	4
Application for license - - - - -	1

PERMITS ISSUED:

Total number of permits issued - - - - -	885
Employment - - - - -	92
Solicitors - - - - -	147
Social affairs - - - - -	426
Disposal of alcoholic beverages - - - - -	137
Special wine - - - - -	1
Miscellaneous permits - - - - -	82

10. ADVERTISING - "YOU PAY" COIN DEEMED GAMBLING DEVICE PROHIBITED ON LICENSED PREMISES.

May 1, 1947

Joseph Hensler Brewing Co.
Newark, N. J.

Gentlemen:

There has come to my attention your "You Pay" advertising coin.

On one face of the coin, approximately the size of a half-dollar, there appears the legend, "Round & Round She Goes Where She Stops Nobody Knows", through the center of which runs an arrow on which there is superimposed the words "You Pay". On the other face there appears the statement, "You'll Always Win If You Ask for Hensler Light Beer". In the center of the bottom face of the coin is a small rounded protruberance of sufficient height to permit the coin to spin freely on a horizontal surface such as a bar or table top. The coin is obviously designed to be spun to decide by chance which of two or more persons at the bar or at a table is to pay for the round of drinks, the loser being the one to whom the "You Pay" arrow points.

State Regulations No. 20, Rule 7, provides:

"No licensee shall engage in or allow, permit or suffer any pool-selling, book-making or any playing for money at faro, roulette, rouge et noir or any unlawful game or gambling of any kind, or any device or apparatus designed for any such purpose, or any machine or device commonly known as a bagatelle or pin ball machine, on or about the licensed premises."

In New Jersey the playing of cards or dice upon the licensed premises under an agreement whereby the loser is to pay for drinks is contrary to law (Brown v. State, 49 N.J.L. 61) and would constitute a violation of the above quoted rule and subject a retail license to suspension or revocation if occurring on licensed premises (Re Gott, Bulletin 65, Item 10). Since the coin above described is obviously designed to be used to determine by chance the person to pay for drinks, it is a device designed for gambling and its use on retail licensed premises for the purpose for which it was designed would constitute gambling within the contemplation of the above quoted rule. Cf. Re Ballantine, Bulletin 86, Item 12; Re Krueger, Bulletin 252, Item 3.

By distributing these coins direct to the public or to retailers for distribution by them to their customers, you are openly encouraging people to gamble and are inviting prosecution of disciplinary proceedings against retail licensees who permit the use of your coins on their licensed premises. Hence, our telegram to you reading, "Discontinue immediately distribution of 'You Pay' advertising coin and recall any already distributed. Letter follows."

I expect your immediate acknowledgment of this letter and promise of compliance.

Very truly yours,
ERWIN B. HOCK
Commissioner.

11. APPELLATE DECISIONS - MALMQUIST v. SPARTA TOWNSHIP AND ROBERTSON
AND SEALS.
MALMQUIST v. SPARTA TOWNSHIP AND SCHEUER.

CARL MALMQUIST,)
Appellant,)

-vs-

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF SPARTA, and WALTER)
ROBERTSON, HULDA P. ROBERTSON,)
HAROLD A. SEALS, VIOLA P. SEALS,)
t/a MANOR FARM HOTEL,)
Respondents.)

ON APPEAL

CARL MALMQUIST,)
Appellant,)

O R D E R

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP)
OF SPARTA, and JOSEPHINE SCHEUER,)
Respondents.)

William C. Egan, Esq., Attorney for Appellant.
William A. Dolan, Esq., Attorney for Respondent Township Committee
of the Township of Sparta.
Vanderbach & Vanderbach, Esqs., by Lewis W. Vanderbach, Esq.,
Attorneys for Respondents Walter Robertson, Hulda P. Robertson,
Harold A. Seals, Viola P. Seals and Josephine Scheuer.

BY THE COMMISSIONER:

These appeals were filed from the action of respondent Township Committee whereby it issued a plenary retail consumption license to respondents Robertson and Seals for premises known as Manor Farm Hotel and a plenary retail consumption license to respondent Scheuer for premises known as Glen Lake Lodge, Township of Sparta.

After some testimony had been taken, the attorney for the appellant in both cases advised the Department that his client desired to withdraw the appeals. Subsequently a formal stipulation of discontinuance was entered herein. Since no reason appears to the contrary,

It is, on this 5th day of May, 1947,

ORDERED that both of the above appeals be and the same are hereby dismissed.

ERWIN B. HOCK
Commissioner.

12. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - EFFECTIVE DATES FIXED
FOR SUSPENSION PREVIOUSLY IMPOSED UPON REOPENING OF BUSINESS.

In the Matter of Disciplinary
Proceedings against)

LOLA G. RILEY)
T/a HARBOR INN)
501 Dock Street)
Wildwood, N. J.,)

O R D E R

Holder of Plenary Retail Consump-)
tion License C-47 issued by the)
Board of Commissioners of the)
City of Wildwood.)

BY THE COMMISSIONER:

It appearing that by Order dated September 13, 1946, the license held by the above defendant was suspended for a period of fifteen days, and that the effective date of said suspension was reserved for future determination (Re Riley, Bulletin 730, Item 3), and

It appearing that defendant is entitled to the benefit of the subsequently adopted policy whereby five days were remitted for a non vult plea (Re Gelb, Bulletin 741, Item 8), and

It further appearing that defendant's premises have now been reopened for business;

It is, on this 5th day of May, 1947,

ORDERED that the suspension heretofore imposed be reduced from fifteen days to ten days, and that Plenary Retail Consumption License C-47, issued by the Board of Commissioners of the City of Wildwood to Lola G. Riley, t/a Harbor Inn, for premises at 501 Dock Street, Wildwood, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. May 12, 1947, and terminating at 2:00 a.m. May 22, 1947.

ERWIN B. HOCK
Commissioner.

13. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - CHARGE AS TO WHISKEY
DISMISSED FOR LACK OF PROOF - LICENSEE FOUND GUILTY AS TO
POSSESSION OF ILLICIT WINE - LICENSE SUSPENDED FOR TEN DAYS.

In the Matter of Disciplinary)
Proceedings against)

MICHAEL & JOSEPH R. deSIMONE)
T/a CRYSTAL INN)
417 Main Avenue)
Clifton, N. J.,)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consump-)
tion License C-31, issued by the)
Municipal Council of the City of)
Clifton.)

Louis P. Bertoni, Esq., Attorney for Defendant-licensees.
William F. Wood, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendants pleaded not guilty to charges alleging (1) possession of illicit alcoholic beverages (four bottles variously labeled containing whiskey) and (2) possession and custody of an illicit alcoholic beverage (a gallon jug of wine manufactured without license or permit), both in violation of R. S. 33:1-50.

As to the first charge, it appears that on November 4, 1946, a junior inspector of the Federal Alcohol Tax Unit visited the licensed premises to make routine check of the open stock of alcoholic beverages. His field test disclosed that four bottles of whiskey were apparently underproof and possibly off color. However, before the bottles could be seized and transmitted to the Federal chemist for analysis, Michael DeSimone, one of the licensees, either bodily ejected the inspector or ordered him off the premises. Shortly thereafter, the inspector returned with two of his fellow agents and a local policeman, whereupon DeSimone was arrested and charged with forcibly obstructing and hindering a Federal officer in the execution of his duties. At that time, the four bottles in question were not available for retest or seizure although two days later the bottles were made available by DeSimone. However, field test on that occasion disclosed the contents apparently genuine as labeled.

While I have no doubt that the Federal inspector in fact found four bottles of whiskey on the licensed premises which tested under the labeled proof according to his field test, I am nevertheless constrained to conclude that such evidence is insufficient upon which to base a finding of guilt of possession of illicit alcoholic beverages. Long experience has demonstrated that the field test in question is neither accurate or dispositive, for which reason it is used merely as a divining rod, so to speak, to select certain bottles for careful and exacting analysis in the laboratory by a chemist. Many factors may combine to produce an appearance of irregularity when liquor is subjected to the field test. However, it frequently results that the same liquor, when analyzed by a qualified chemist, is determined to be genuine as labeled. It follows that, on the basis of findings appearing in a field test alone, guilt of possession of illicit alcoholic beverages cannot conclusively be determined. Hence, notwithstanding strong suspicion, I must find defendants not guilty as to the first charge.

As to the second charge, on inspecting the basement of the licensed premises on November 6, 1946, an investigator of the Federal Alcohol Tax Unit discovered a 50-gallon barrel and nine one-gallon jugs, all apparently containing home-made wine. This officer took a

sample from the barrel and another composite sample from four of the jugs. Analysis by the Federal chemist established that the contents of the barrel was a soured wine not fit for consumption (and hence not an alcoholic beverage within the definition contained in R. S. 33:1-1-b) but that the contents of the jugs was wine containing 9.95% alcohol by volume, an alcoholic beverage.

Defendant Michael DeSimone admitted that the wine had been manufactured by his father, who held no license or permit so to do. Under the circumstances, I have no alternative but to find defendants guilty as to the second charge.

Defendants have no previous adjudicated record save a suspension of one day (which sentence was suspended by the local issuing authority) for sale on Election Day in 1935. In view of the long period of time since the imposition of that suspension, it will not be deemed an aggravating circumstance. However, the violation of which defendants have here been found guilty is one that strikes at the very root of control. If licensees are permitted freely to dabble in the home manufacture of alcoholic beverages without license or permit and to possess such beverages on the licensed premises where easy access might tempt their sale under cloak of the license privilege, a serious problem of enforcement of the liquor law and the tax law might result. For these reasons, I shall suspend defendants' license for a period of ten days.

Accordingly, it is, on this 5th day of May, 1947,

ORDERED that Plenary Retail Consumption License C-31, issued by the Municipal Council of the City of Clifton to Michael & Joseph R. DeSimone, t/a Crystal Inn, for premises 417 Main Avenue, Clifton, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. May 12, 1947, and terminating at 3:00 a.m. May 22, 1947.

ERWIN B. HOCK
Commissioner.

14. STATE LICENSES - NEW APPLICATIONS FILED.

Nathan Schwartz and Mae Schwartz
T/a Commercial Warehouses
90 Grove St. and Erie Railroad
Paterson, N. J.

Application for Public Warehouse License filed May 1, 1947.

Junius W. Mattox
T/a Mattox Trucking Service
418 Grove St.
Newark, N. J.

Application for Transportation License filed May 1, 1947.

Peter Saro
Pier 16
Hoboken, N. J.
Steamer "Palace"

Application for Plenary Retail Transit License filed May 5, 1947.

Cape May County Beverage Company, Inc. (State Beverage
3601-05 Park Blvd. and 275 West Distributor's License SBD-134)
Lincoln Ave.

Wildwood, N. J.

Application for additional warehouse at 202-204 Elmer Street,
Vineland, N. J., filed May 6, 1947.

ERWIN B. HOCK
Commissioner.

15. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - EFFECTIVE DATES FIXED
FOR SUSPENSION PREVIOUSLY IMPOSED UPON REOPENING OF BUSINESS.

In the Matter of Disciplinary)
Proceedings against)

HYMAN COHEN)

149 River Street)

Paterson 1, N. J.,)

O R D E R

Holder of Plenary Retail Consump-)
tion License C-266, issued by)
the Board of Alcoholic Beverage)
Control of the City of Paterson.)

The effective date of the fifteen-day suspension heretofore
imposed herein having been reserved for future determination (Bulletin
748, Item 8); and

It appearing that the Supreme Court of the State of New Jersey
has dismissed the writ of certiorari obtained by Cedar Restaurant and
Cafe Co.;

It is, on this 5th day of May, 1947,

ORDERED that Plenary Retail Consumption License C-266, held by
defendant herein, be and the same is hereby suspended for a period of
fifteen days, commencing at 3:00 a.m. May 12, 1947, and terminating
at 3:00 a.m. May 27, 1947.

Erwin B. Hock

Commissioner.