

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

BULLETIN 443

FEBRUARY 6, 1941.

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

BULLETIN 443

FEBRUARY 6, 1941.

1. DISCIPLINARY PROCEEDINGS - SALES DURING PROHIBITED HOURS -
SECOND OFFENSE - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary)
Proceedings against)

GEORGE L. LILAKOS,
5 Saybrook Place,
Newark, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Con-)
sumption License C-7 issued by)
the Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)
- - - - -)

George L. Lilakos, Pro Se.

Richard E. Silberman, Esq., Attorney for the Department of
Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to a charge of selling an alcoholic beverage after 3:00 A.M., in violation of Section 1 of Ordinance 3930 adopted by the Board of Commissioners of the City of Newark on December 21, 1938.

The Department file discloses that the principal business of the licensed premises is that of a restaurant, so that the Newark ordinance in question does not prevent the premises from being open for purposes other than the sale of alcoholic beverages. Two investigators entered the licensed premises shortly after 3:30 A.M. on January 10, 1941. At about 3:50 A.M. they observed a man purchase a bottle of wine from the person in charge of the counter. As soon as payment had been made and the bottle delivered, the investigators identified themselves and seized the bottle of wine for evidential purposes. The counterman in charge admitted the sale of an alcoholic beverage after 3:00 A.M. and further admitted that he knew no sales could be made after that hour. The licensee was not present in the premises.

The fact that the licensee was not personally present and that the violation was committed by an employee is no excuse. Re Malone, Bulletin 369, Item 1. The minimum penalty for this violation is five days. Re Gamba, Bulletin 407, Item 6. However, the Department files disclose that on April 2, 1940 I suspended the license then held by this licensee for a period of five days (less two days for a guilty plea) for a similar violation. In view that this is the licensee's second offense of the same nature, the penalty will be doubled and the license suspended for ten days.

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

Accordingly, it is, on this 29th day of January, 1941,

ORDERED, that Plenary Retail Consumption License C-7, heretofore issued to George L. Lilakos by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of five (5) days, effective February 3, 1941, at 3:00 A.M.

E. W. GARRETT,
Acting Commissioner.

2. APPELLATE DECISIONS. - HOLST v. FAIRFIELD.

MUNICIPAL REGULATIONS - HOURS OF SALE - ADOPTION BY MUNICIPALITY
APPEALED ALLEGING DISCRIMINATION, IRREPARABLE INJURY AND IMPROPER
MOTIVATION - REGULATION APPROVED.

WARREN J. HOLST,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF FAIRFIELD,

Respondent.

ON APPEAL

CONCLUSIONS AND ORDER

David L. Horuvitz, Esq., Attorney for Appellant.
Stanger & Howell, Esqs., by Robert G. Howell, Esq., Attorneys
for Respondent.

Appellant appeals, under the provisions of R. S. 33:1-41, from Section 7 of Ordinance No. 34 adopted on December 3, 1940, and prays that the same may be set aside, vacated, repealed or modified. Said section provides as follows:

"That no retail licensee shall sell, serve or deliver any alcoholic beverages at any time on the first day of the week, commonly called Sunday, or upon any week day between the hours of twelve o'clock midnight of the preceding day and seven o'clock in the morning or between twelve o'clock midnight on Sunday and seven o'clock in the morning on Monday of any week. The periods of time herein mentioned shall be computed in accordance with Eastern Standard Time, except that for that period between the last Sunday in April and the last Sunday in September of each year when the aforementioned time shall be computed in accordance with Eastern Daylight Saving Time."

Appellant does not complain about the prohibition of Sunday sales. For more than two years such sales have been prohibited by referendum in the Township of Fairfield. He alleges, however, that the section which now requires him to stop selling at midnight on weekdays (instead of at 2:00 A.M. on weekdays, as he was permitted to do under prior municipal regulations) is discriminatory and will cause him irreparable injury. He also alleges that the members of the Township Committee were improperly motivated in adopting said section.

Appellant conducts a night club known as "Pinehurst Supper Club". He has a large investment and employs an orchestra and entertainers. He testified that the majority of his customers come to his place of business after 11:00 P.M.

The three members of the Township Committee testified that there are no industries in the township; that the large majority of the inhabitants are farmers who retire at an early hour; and that they adopted the midnight provision as to weekdays because they felt that the public opinion of the residents favored such action. They testified also that they were motivated to some extent by the fact that the premises of three of the five consumption licensees, including appellant's premises, are located within one-half mile of Bridgeton, which has a similar requirement that sales must cease at midnight on weekdays.

The ordinance applies to all licensees, and hence does not appear to be discriminatory. If the section is reasonable, the mere fact that appellant would be injured by the terms thereof is not a sufficient reason for altering its provisions. Licenses are governed by the terms of regulations adopted subsequent to issuance of the license. Re Leonard, Bulletin 225, Item 14.

As to alleged improper motivation: Appellant and a number of his witnesses testified that two of the Township Committeemen had stated to them that the ordinance was adopted as "spite work" against appellant. These conversations are alleged to have taken place recently after respondent successfully opposed an application by appellant for a writ of certiorari to review refusal of the Township Committee to call a new referendum upon Sunday sales. The two Committeemen gave a different version of these conversations, stating in effect that they had said merely that the application for the writ had stirred up the question of closing hours. All three Committeemen denied that they were in any way improperly motivated in adopting the ordinance in question.

No personal interest, fraud or corruption on the part of any of the Township Committeemen is intimated or charged. Under these circumstances, their motive for passing an ordinance cannot affect its validity. American Grocery Co. v. Board of Commissioners, 124 N.J.L. 293 (Sup. Ct. 1940). Cf. Reimer v. Allendale, 123 N.J.L. 563 (Sup. Ct. 1939).

Considering all of the facts of the case, I find that Section 7 of Ordinance No. 34 is reasonable and that its adoption was not prompted by improper motives.

Accordingly, Section 7 of Ordinance No. 34, adopted by the Township Committee of the Township of Fairfield on December 3, 1940, is hereby approved; and

It is, on this 30th day of January, 1941,

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

E. W. GARRETT,
Acting Commissioner.

3. DISCIPLINARY PROCEEDINGS - FRONT FOR NON-LICENSEE - THE TRUE OWNER DISQUALIFIED THROUGH LACK OF FIVE YEARS' NEW JERSEY RESIDENCE - SITUATION CORRECTED - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary
Proceedings against

JOHN TESSIERI,
T/a CLOVER LEAF DINER & BAR,
E/S Black Horse Pike,
Hamilton Township, Atlantic County,
P.O. Mays Landing, R.F.D. 2, N.J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-24 for the fiscal year
1939-40, transferred by the Township
Committee of the Township of
Hamilton (Atlantic County).

Frank S. Farley, Esq., Attorney for Licensee.
Samuel B. Helfand, Esq., Attorney for Department of Alcoholic
Beverage Control.

The following charges were served upon the licensee:

"1. In your application for transfer of license dated August 4, 1939 filed with the Township Committee of the Township of Hamilton (Atlantic County), upon which Plenary Retail Consumption License C-24 for the year 1939-40 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 in fact one Patrick Fiorey had such an interest; said false statement being in violation of R. S. 33:1-25.

"2. Since on or about August 21, 1939 and until the present time, you knowingly aided and abetted Patrick Fiorey, 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."

In the application dated August 4, 1939 for transfer of said license from Foster Quickmire to John Tessieri, the latter denied, under oath, that any individual other than himself had any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license. The evidence shows that at that time Patrick Fiorey was the lessee of the premises under a written lease, executed on May 15, 1939 between John Tessieri, the owner of the premises, and the said Patrick Fiorey; that after the license had been transferred and until May 1, 1940 said Patrick Fiorey received all the income from the liquor business conducted upon said premises, deposited the same in his own bank account, and paid all bills by his personal checks. There is no doubt that licensee is guilty of making a false statement in the application for transfer in that he failed to disclose the interest of Patrick Fiorey. I am further satisfied that, from August 21, 1939 until May 1, 1940, he knowingly aided and abetted said Patrick Fiorey to exercise the rights and privileges of his license.

I therefore find the licensee guilty as to both charges.

As to penalty: It appears that, about a month before the investigators from this Department began this investigation, John Tessieri actually took over the operation of the business, opened a bank account in his name, and deposited all income in said account. John Tessieri testified that since May 1, 1940 he has owned and operated the business. The exhibits show that he has been paying all bills incurred since May 1, 1940 from his personal account. I find that the improper set-up has been corrected. Because of licensee's frank disclosure of the true facts and because the only apparent disqualification against Fiorey was his lack of five years' residence in New Jersey, I shall, since the situation has been corrected, suspend the license for ten days instead of imposing a more severe penalty. Re Ceravolo, Bulletin 420, Item 6; Re Pagliughi, Bulletin 428, Item 1.

Since institution of these proceedings, License C-24 for the 1939-40 period has been renewed by issuance of License C-24 for the 1940-41 period. It appears, however, that the premises are closed from September to May, and hence a suspension effective at once would be nugatory.

Accordingly, it is, on this 31st day of January, 1941,

ORDERED, that Plenary Retail Consumption License C-24, heretofore issued to John Tessieri by the Township Committee of the Township of Hamilton (Atlantic County) be and the same is hereby suspended for a period of ten (10) days, effective June 2, 1941, at 4:00 A.M. (Daylight Saving Time or Eastern Standard Time, whichever may then be in effect).

E. W. GARRETT,
Acting Commissioner.

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

In the Matter of Disciplinary
Proceedings against

WILLY GEORGE BACKOFEN,
3714 Palisade Avenue,
Union City, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Con-
sumption License C-218, issued
by the Board of Commissioners
of the City of Union City.

Edward J. Madden, Esq., Attorney for the defendant-licensee.
Robert R. Hendricks, Esq., Attorney for the State Department of
Alcoholic Beverage Control.

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

The Department file shows that on January 14, 1941 the defendant-licensee sold a quart bottle of Wilson "That's All" Whiskey to an investigator for the price of \$2.35. The minimum consumer price at which a quart bottle of this product could be sold, lawfully, at that time, was \$2.59. Bulletin 424.

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

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

Accordingly, it is, on this 1st day of February, 1941,

ORDERED, that Plenary Retail Consumption License C-218, heretofore issued to Willy George Backofen by the Board of Commissioners of the City of Union City, be and the same is hereby suspended for a period of five (5) days, effective February 3, 1941, at 3:00 A.M.

E. W. GARRETT,
Acting Commissioner.

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

In the Matter of Disciplinary)
Proceedings against)

WALTER KAMINSKI,)
733 - 32nd Street,)
Union City, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Con-)
sumption License C-70, issued)
by the Board of Commissioners)
of the City of Union City.)
- - - - -)

Walter Kaminski, Pro Se.

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

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

The Department file shows that on January 14, 1941 the son and employee of the defendant-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 a quart bottle of this product could be sold, lawfully, at that time, was \$2.59. Bulletin 424.

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

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

Accordingly, it is, on this 31st day of January, 1941,

ORDERED, that plenary Retail Consumption License C-70, heretofore issued to Walter Kaminski by the Board of Commissioners of the City of Union City, be and the same is hereby suspended for a period of five (5) days, effective February 3, 1941, at 3:00 A. M.

E. W. GARRETT,
Acting Commissioner.

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

In the Matter of Disciplinary Proceedings against

SHARR DRUG CO., INC.,
133 and 135 Wanaque Avenue,
Pompton Lakes, N. J.,

Holder of Plenary Retail Distribution License D-2 issued by the Mayor and Borough Council of the Borough of Pompton Lakes.

CONCLUSIONS
AND ORDER

Sharr Drug Co., Inc., by Louis Sharr, Treasurer.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

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

The Department file discloses that on January 11, 1941 two investigators observed a one-quart jug of Lord Stirling Apple Brandy displayed in the show window of the licensed premises with a price tag of \$1.89 attached. One of the investigators entered and asked for a quart jug of this product, for which he paid the advertised price. The minimum consumer price at which one-quart jugs of Lord Stirling Apple Brandy could be sold at the time was \$2.25 (Bulletin 424). The investigators identified themselves to the clerk who made the sale and to the Treasurer of the licensee corporation, who was present at the time, and secured signed statements to the effect that the price tag had been displayed "by mistake".

This alleged "excuse" proffered by the licensee is in law no excuse at all. Re Blum, Bulletin 442, Item 9, and the cases therein cited.

Since this is the first violation of record by this licensee, and since no aggravating circumstances appear, the minimum penalty of ten days will be imposed.

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

Accordingly, it is, on this 3rd day of February, 1941,

ORDERED, that Plenary Retail Distribution License D-2, heretofore issued to Sharr Drug Co., Inc. by the Mayor and Council of the Borough of Pompton Lakes, be and the same is hereby suspended for a period of five (5) days, effective February 10, 1941, at 7:00 A. M.

E. W. GARRETT,
Acting Commissioner.

7. DISCIPLINARY PROCEEDINGS - FRONT FOR NON-LICENSEE - MOTHER AND SON - THE TRUE OWNER DISQUALIFIED THROUGH LACK OF UNITED STATES CITIZENSHIP - NO APPARENT FRAUDULENT PURPOSE OR INTENT - SITUATION CORRECTED - 5 DAYS' SUSPENSION.

In the Matter of Disciplinary
Proceedings against

WILLIAM SCHAUCHULIS,
764 Harrison Ave.,
Harrison, N. J.,

Holder of Plenary Retail Consump-
tion License C-10 issued by the
Town Council of the Town of
Harrison, and transferred during
pendency of these proceedings to

HARRISON PLANTATION
TAVERN, INC.

for the same premises.

CONCLUSIONS
AND ORDER

Richard E. Silberman, Esq., Attorney for the State Department
of Alcoholic Beverage Control.
Thomas S. Murphy, Esq., Attorney for the Licensee.

Licensee has pleaded guilty to the following charges:

- "1. In your application for license dated June 28, 1940 filed with the Town Council of the Town of Harrison, upon which Plenary Retail Consumption License C-10 for the year 1940-41 was granted, 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 in fact Helen Schpenskas had such an interest; said false statement being in violation of R. S. 33:1-25.
- "2. Since on or about June 27, 1935 and until the present time, you knowingly aided and abetted Helen Schpenskas, 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."

On October 8, 1940, during an investigation made by two Departmental agents at the licensed premises, Mrs. Helen Schpen-skas, mother of the licensee, admitted that the business belonged solely to her, and not to her son. Her explanation given at that time, and later at the disciplinary hearing, was that she had little or no education, could neither read nor write, and so thought it would be better if the license were in the name of her son.

It also appears, however, that she is not a citizen of the United States, although apparently she thought she was until advised differently by the Departmental agents. She told them that her first husband had become a U.S. citizen on October 2, 1924 and that she had always been under the impression that she had thereby become a citizen of this country. This is true, however, only of alien women who were married to citizens prior to September 22, 1922. U.S.C.A. Tit. 8, Sec. 368. The agents report that she was greatly surprised at learning she was not a citizen and was much perturbed over the fact that, because of her mistaken belief, she had not yet registered under the provisions of the Alien Registration Act of 1940. U.S.C.A. Tit. 8, Sec. 451.

It becomes important to determine the reason for the "front" since, if engineered for the reason given and not to conceal her lack of citizenship, the license, in view of the relationship of the parties, would be suspended for five days. Cf. Re Sowa, Bulletin 437, Item 9, which involved a father and son, both of whom were fully qualified to hold licenses, and where it was said:

"Technical 'front' cases, such as the instant case, involving the non-disclosure, without intent to deceive or defraud, of the interest of other close members of a family, who are fully qualified in their own right, have been treated in a lenient manner where correction has been made or is contemplated. Where, under these circumstances, the license has been obtained in the name of a wife without disclosing the interest of her husband, 'front' charges have been dismissed upon correction of the situation. Re Waldman, Bulletin 404, Item 11; Re Mascolo, Bulletin 427, Item 7. But where, under similar circumstances, the interest of another qualified member, or members, of a family, other than a husband or wife, has not been disclosed, suspension of license for five days has been imposed. Re DiGiovanni (brothers), Bulletin 401, Item 6.

"A five-day suspension, therefore, will be imposed in the instant case."

However, where, as here, the undisclosed person is actually disqualified because of lack of residence or citizenship, the normal penalty upon a guilty plea with a full and frank disclosure of the facts would be ten days, despite the family relationship of the parties. Cf. Re Boreth, Bulletin 442, Item 7, which was concerned with a husband and wife. In such case, there is an almost irrefutable presumption that the failure to reveal the disqualification resulted from a deliberate intent to circumvent the pertinent provisions of the Alcoholic Beverage Law.

After carefully reviewing the entire record in this case, I am satisfied that the attendant circumstances are so strongly corroborative of the explanation given as to warrant a finding that the mother nonestly believed, and with reasonable cause, that she was possessed of the requisite citizenship to enable her to hold a license in her own name. Her educational handicap, her inability to read or write, her reactions as hereinbefore mentioned when informed of her lack of U. S. citizenship, convince me that the "front" was not motivated from any desire to circumvent the citizenship provisions of the Alcoholic Beverage Law.

Prior to the hearing the license was transferred to the Harrison Plantation Tavern, Inc., subject to the outcome of these proceedings. It appears from the record that the transfer was bona fide and that Mrs. Schpenskas has sold all of her right, title and interest in the license and the business to the corporation, and has severed all her connections therewith. Thus, the unlawful situation has been fully corrected. I shall, therefore, suspend the license for five days.

Accordingly, it is, on this 3rd day of February, 1941,

ORDERED, that Plenary Retail Consumption License C-10, heretofore issued to William Schauchulis by the Town Council of the Town of Harrison, for premises 764 Harrison Avenue, Harrison, and transferred during the pendency of these proceedings to Harrison Plantation Tavern, Inc., be and the same is hereby suspended for a period of five (5) days, effective February 10, 1941, at 3:00 A. M.

E. W. GARRETT,
Acting Commissioner.

8. ACTIVITY REPORT FOR JANUARY, 1941

To: E. W. Garrett, Acting Commissioner

ARRESTS: Total number of persons - - - - - 19
 Licensees - - - - 0 Non-licensees - 19

SEIZURES: Still - total number seized - - - - - 5
 Capacity 1 to 50 Gallons - - - - - 2
 Capacity 50 Gallons and over - - - - - 3
 Motor Vehicles - total number seized - - - - - 3
 Trucks - 1 Passenger cars - 2
 Beverage Alcohol - - - - - 1 Gallon
 Mash - total number of gallons - - - - - 4,240
 Alcoholic Beverages
 Beer, Ale, etc. - - - - - 21 Gallons
 Wine - - - - - 4 "
 Whiskies and other hard liquor - - - - 8 "

RETAIL INSPECTIONS:

Licensed premises inspected - - - - - 1,813
 Violations disclosed:
 Illicit (bootleg) liquor - - - - 12
 Gambling violations - - - - - 16
 Sign violations - - - - - 27
 Unqualified employees - - - - - 79
 Other mercantile business - - - - 7
 Disposal permits necessary - - - - 3
 "Front" violations - - - - - 4
 Improper beer markers - - - - - 10
 Other violations found - - - - - 27
 Total violations found - - - - - 185
 Total number of bottles gauged - - - - - 15,253

STATE LICENSEES:

Plant Control inspections completed - - - 30
 License applications investigated - - - - 7

COMPLAINTS:

Investigated and closed - - - - - 319
 Investigated, pending completion - - - - - 404

LABORATORY:

Analyses made - - - - - 107
 Alcohol and water and artificial coloring
 cases - - - - - 14
 Poison and denaturant cases - - - - - 2

HEARINGS HELD:

Appeals - - - - - 6 Disciplinary proceedings - 29
 Seizures - - - - - 9 Eligibility - - - - - 6

PERMITS ISSUED:

Unqualified employees - - - - - 339
 Home manufacture of wine - - - - - 239
 Solicitors - - - - - 93
 Social affairs - - - - - 203
 Disposal of alcoholic beverages - - - - - 86
 Miscellaneous permits - - - - - 102
 Total - - - - - 1062

Respectfully submitted,
 SYDNEY B. WHITE,
 Chief Inspector.

9. DISQUALIFICATION - APPLICATION TO LIFT - FAILURE OF PETITIONER TO CONDUCT HIMSELF IN A LAW-ABIDING MANNER FOR THE LAST FIVE YEARS - APPLICATION DENIED.

In the Matter of an Application)
to Remove Disqualification be-)
cause of a Conviction, pursuant)
to R. S. 33:1-31.2 (as amended by)
Chapter 350, P.L. 1938).)

CONCLUSIONS
AND ORDER

Case No. 127)
-----)

This is petitioner's second application to remove disqualification from holding a liquor license or working for a liquor licensee in this State. Such disqualification results from his conviction, in February 1935, of a crime involving moral turpitude within the meaning of R. S. 33:1-25 - viz., operating a tavern as a disorderly house (i.e., for purposes of prostitution).

Petitioner's first application for removal was filed in June 1940, some eight months ago, but was denied outright because petitioner deliberately lied at the hearing in that case by falsely testifying that, when warned by the local Police Chief to stop his employment at a certain tavern, he actually ceased such employment and was not working at the tavern for some six weeks prior to the hearing. The falsity of his testimony came to light when a Department agent, checking at the tavern soon after the hearing, found petitioner actually tending bar there and learned from the licensee that petitioner had been working at the tavern throughout. Petitioner, on seeing this investigator and apparently recognizing him, "ducked" out of the tavern and attempted to hide. See Re Case No. 99, Bulletin 417, Item 7.

Petitioner, in here reapplying for removal, does not dispute the fact of his past false testimony. He claims, in effect, that economic stress compelled him to continue to work at the tavern after the local Police Chief's warning and to lie about such fact at the last hearing; that, after receiving notice of denial of his last application, he immediately ceased all connection with the tavern.

Now, under the Alcoholic Beverage Law, I may remove a disqualification resulting from conviction of a crime only when satisfactorily convinced that the petitioner has, for five years last past, "conducted himself in a law-abiding manner....and that his association with the alcoholic beverage industry will not be contrary to the public interest." R. S. 33:1-31.2.

Petitioner, by his conviction in February 1935 for running a tavern as or with a brothel, deeply stamped himself, from the very nature of the offense, as then lacking in the primary elements of common fitness and responsibility which, for the public good, must necessarily be required of every person wishing to engage in the liquor business. Clearly, in view of his deliberate lying under oath at the hearing on his previous application, I cannot possibly conclude that he has, during the last five years, actually "turned over a new leaf" and gained moral responsibility and common respect for the law. Perhaps the petitioner has, in truth, really "regenerated" himself and merely had an unfortunate lapse when giving his false testimony. However, in matters like this, where I am called upon to determine whether a petitioner has lived down his past, I can only judge by his actual deeds.

I see no reason for here reaching any decision different from the one reached on petitioner's first application.

Accordingly, the present petition is hereby dismissed.

E. W. GARRETT,
Acting Commissioner.

Dated: February 4, 1941.

10. ELIGIBILITY - EMBEZZLEMENT - MORAL TURPITUDE - APPLICANT DECLARED
INELIGIBLE FOR EMPLOYMENT BY LIQUOR LICENSEE.

February 4, 1941

Re: Case No. 362

Applicant seeks a determination as to whether he is disqualified from working for a liquor licensee in New Jersey by reason of a conviction of a crime.

On August 25, 1940 applicant was arrested on a charge of embezzling \$329.50 from a wholesale liquor licensee by whom he had been employed. He was subsequently indicted and on December 19, 1940 pleaded non vult to said indictment. On January 9, 1941 he was sentenced to a county penitentiary for one year, but the operation of the sentence was suspended and he was placed on probation to make restitution and pay costs.

Applicant testified that he had been employed on a commission basis as a solicitor by a wholesale liquor licensee for a period of about four months; that his earnings were very small; that the shortage in his accounts arose because he had spent money in getting trade and had also used some of the money collected by him for his own use because of sickness in his family.

Embezzlement ordinarily involves moral turpitude. Re Case No. 285, Bulletin 345, Item 8; Re Case No. 316, Bulletin 397, Item 6. While I sympathize with the applicant, who is an elderly man and has no prior criminal record, there is nothing in his testimony which would free applicant's crime of the element of moral turpitude ordinarily involved in embezzlement.

It is, therefore, recommended that applicant be advised that he is disqualified from holding a liquor license or being employed by a liquor licensee in this State.

Edward J. Dorton,
Deputy Commissioner
and Counsel.

APPROVED:

E. W. GARRETT,
Acting Commissioner.

11. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCIES IN COLOR, ACID AND SOLID CONTENT - SECOND OFFENSE AFTER PREVIOUS WARNING - PRIOR CONVICTION OF DISSIMILAR OFFENSE - 40 DAYS' SUSPENSION - DEFENDANT DISQUALIFIED FROM RECEIVING ANY FURTHER LICENSE BY COMMISSION OF SECOND VIOLATION OF THE ALCOHOLIC BEVERAGE LAW.

In the Matter of Disciplinary)
 Proceedings against)

KARL LOTCPEICH,)
 100 Somerset Street,)
 Garfield, N. J.,)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Con-)
 sumption License No. C-52,)
 issued by the City Council of)
 the City of Garfield.)

Lawrence Diamond, Esq., Attorney for Defendant-Licensee.
 Charles Basile, Esq., Attorney for Department of Alcoholic
 Beverage Control.

The defendant is charged with possessing illicit liquor at his tavern in violation of the Alcoholic Beverage Law (R. S. 33:1-50).

On September 13, 1940, a federal inspector, on testing fifteen open bottles of liquor at the bar in the defendant's tavern, found an almost full bottle, labeled "Canadian Club Blended Canadian Whiskey", which tested unsatisfactorily. Upon being informed of this fact, the employee then in charge of the tavern called the defendant to the premises. However, neither the employee nor the defendant ventured any explanation about the liquor.

Subsequent analysis of such liquor by the federal chemist showed it to differ substantially in acids and solids from genuine samples of "Canadian Club Blended Canadian Whiskey", and to contain only natural coloring (thus indicating a straight whiskey), whereas genuine "Canadian Club Blended Canadian Whiskey" (being a blended whiskey) contains artificial coloring.

From such analysis, particularly the highly significant variation as to coloring, it is clear that this bottle contained, not genuine "Canadian Club Blended Canadian Whiskey", as labeled, but a "refill" of other liquor.

The defendant virtually admits such "refill." In explanation, he claims that the employee had, while fixing the liquor bottles in the tavern several hours before the federal inspector entered, accidentally cracked a full bottle of Dugan's straight whiskey; that such employee, to save (but apparently not to sell) the liquor, poured it into an almost empty "Canadian Club" bottle at the bar; that he (the defendant) first learned this fact from the employee only after the federal inspector had left the tavern. The employee corroborates this story.

Frankly, I am highly skeptical of the innocent version of the "refill" urged by the defense. If the defendant's employee had in good faith refilled merely to save the Dugan's whiskey (and not to sell it as "Canadian Club Blended Canadian Whiskey"), I do not

see why, when the federal inspector actually detected something wrong, the employee, even though now claiming he was "afraid", did not immediately explain the matter. Nor do I see any reason why, if the employee refilled merely for the alleged purpose, he put the refilled bottle back on the bar together with the liquor currently for sale instead of setting it aside in some way.

However, even assuming the "refill" occurred merely for the purpose claimed, nevertheless, since such "refill" was in any event an unlicensed and hence unlawful act of bottling, the liquor necessarily became an illicit alcoholic beverage. See R.S.33:1-1(i), 2, 78; Re Haney, Bulletin 304, Item 13. In consequence, the mere possession of such liquor at the tavern was in itself a violation of the Alcoholic Beverage Law (R. S. 33:1-50), for which the licensee must be, and consistently has been, held strictly accountable, even though he be personally innocent of the refilling. See, for example, Re Military Park Cafe, Bulletin 321, Item 4; Re Orbach, Bulletin 406, Item 10, and cases therein cited; Re Novack, Bulletin 406, Item 11; Re Kalfus, Bulletin 437, Item 11; Re DeVita, Bulletin 438, Item 10.

Hence, I find the defendant guilty as charged.

As to penalty: The defendant already has a record. In 1935 he was convicted in criminal court and fined \$200.00 for possessing (as in the instant case) illicit liquor at his tavern, and, in addition, the local issuing authority, the Garfield City Council, suspended his then license for thirty days. In July 1940 (less than two months before the instant violation) the defendant was specifically warned by this Department about under-proof (although not necessarily refilled) liquor being found at his licensed premises.

Moreover, the Garfield City Council recently suspended the defendant's present license from January 6 to February 20, 1941 (a 45-day suspension which is still being served) because of the defendant's violation of the local "hostess" regulation at his tavern during October 1940.

In view of such a record, the defendant's license will, for the present violation, be suspended for full forty days, such suspension to begin as soon as his current forty-five day suspension terminates, thus, in effect, keeping his license under suspension for eighty-five days.

It must be further noted that the defendant, in addition to the suspension now being imposed upon him, is also, as a result of this proceeding, necessarily disqualified under the Alcoholic Beverage Law (R. S. 33:1-25, 26) from hereafter obtaining any further liquor license, renewal or otherwise, or from hereafter working at or in connection with any liquor premises in New Jersey other than under his present license, since he has been now twice found guilty of violating the Alcoholic Beverage Law (the first being the occasion in 1935 and the second being the instant case). Re Wismer, Bulletin 298, Item 5; Re Bolton, Bulletin 316, Item 1.

Accordingly, it is, on this 5th day of February, 1941,

ORDERED, that the plenary retail consumption license of Karl Lotcpeich for 100 Somerset Street, Garfield, presently under suspension until February 20, 1941, shall, by reason of the instant proceeding, thereafter continue to remain suspended for an additional period of forty (40) days, effective February 20, 1941.

E. W. GARRETT,
Acting Commissioner.

12. APPELLATE DECISIONS -- GANZA v. GLEN ROCK.

TRANSFER DENIED ALLEGING IMPROPER CONDUCT OF PREMISES AND
OBJECTION TO WOMEN SERVING ALCOHOLIC BEVERAGES -- IMPROPER
CONDUCT UNSUPPORTED BY ANY TESTIMONY AND OBJECTION TO WOMEN
SERVING ALCOHOLIC BEVERAGES UNSUPPORTED BY ANY GENERAL REGU-
LATION -- DENIAL REVERSED AND TRANSFER GRANTED.

FRANCES GANZA,)	
	Appellant,)
-vs-)	ON APPEAL
		CONCLUSIONS
BOROUGH COUNCIL OF THE)	
BOROUGH OF GLEN ROCK,)	
	Respondent.)

Paul A. Vivers, Esq., Attorney for Appellant.
Walter G. Winne, Esq., Attorney for Respondent.

Appellant appeals from respondent's refusal to transfer to her the plenary retail consumption license issued to Cornelius Yonkers, Executor of the Estate of Peter Yonkers, for premises 356-358 South Maple Avenue, Glen Rock.

The application for transfer was denied for the stated reason that respondent "did not wish to have women serving alcoholic beverages." At the hearing, counsel for respondent stated that the transfer was denied for the additional reason that improper conduct of the premises in the past had been the subject of complaint to respondent, although counsel did admit that, upon previous hearing, those complaints were not supported by legal testimony. Following adjournment of the instant hearing to give respondent an opportunity to produce testimony of improper conduct in the past, respondent advised that it would not appear at the adjourned hearing nor would it present any evidence.

In this posture of affairs, respondent's action clearly appears to be arbitrary and unreasonable. That respondent had no bona fide objection to women tending bar appears from its failure to adopt a general regulation prohibiting employment of female bartenders on licensed premises, notwithstanding that the adoption of such a regulation was recommended to it by the State Commissioner of Alcoholic Beverage Control, long prior to the instant application, as the proper means of accomplishing such object. It may be noted that a female licensee and a female bartender are not necessarily equivalent.

The alleged improper conduct of the premises in the past was entirely unsupported by any testimony.

The action of respondent is therefore reversed.

Accordingly, it is, on this 6th day of February, 1941,

ORDERED, that respondent grant the transfer of license for which application was made by appellant.

E. W. Garrett
Acting Commissioner.

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