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

BULLETIN 711 MAY 22, 1946.

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ITEM

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

BULLETIN 711 MAY 22, 1946.

1. APPELLATE DECISIONS - JOHNSON v. WINSLOW TOWNSHIP.

LOUISE JOHNSON,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS AND ORDER
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF WINSLOW,)
Respondent)

Carl Kisselman, Esq., Attorney for Appellant.
Frank M. Lario, Esq., Attorney for Respondent.

This is an appeal from a denial of appellant's application for a plenary retail consumption license for premises on the north side of Williamstown-Tansboro Road, 500 feet north of Reading Seashore Lines Crossing, Williamstown Junction, Winslow Township, Camden County.

The reasons advanced for the denial in this case are as follows:

(1) There are sufficient licensed establishments in the vicinity to serve any and all "transit" trade.

(2) Local public convenience and necessity is at present being amply served by existing nearby licenses.

(3) The issuance of an additional license in the vicinity for which application was made would tend to create a disturbance to the several churches located in the vicinity thereof.

(4) The granting of this application would tend to create a traffic hazard at the railroad crossing.

Winslow Township is described as having an area of approximately 58 square miles and included therein are many small communities. Among these communities is Williamstown Junction, wherein the premises of Louise Johnson are situated.

Williamstown Junction, according to the testimony of several witnesses produced by appellant, has a population of between 75 and 90 persons. The Johnson premises are located on the Williamstown-Tansboro Road (as shown on map Williamstown-New Freedom Road) which, according to appellant's witness, William Johnson, leads "direct to the Palmyra Bridge, and the other way across country to Clayton and Wildwood and Cape May". Johnson further testified that on the Williamstown-Tansboro Road there are three liquor licensed premises within a distance of eight miles. In a southerly direction, one establishment is two miles and another is four miles from the proposed premises; in a northerly direction, one establishment is four miles from the proposed premises. There is also another establishment located on another road, which establishment is three-quarters of a mile from the proposed premises. Divers witnesses produced by appellant testified that in their opinions the issuance of a liquor

license would serve a public need and convenience to the people of Williamstown Junction as well as others who might desire to purchase alcoholic beverages at the restaurant which appellant proposes to conduct.

Two clergymen, one of whom, according to his testimony, is the pastor of a church about one-half mile from the Johnson premises, voiced their objections to the granting of any additional licenses in the township on the ground that there are sufficient liquor establishments presently in existence to supply the need of the local and transient population of the community.

Among the reasons given by the members of the local issuing authority for the denial of the Johnson application was that, in their opinion, public convenience and necessity does not warrant the issuance of the license in question.

Frank Gargano, Township Clerk, testified that there are 25 plenary retail consumption licenses in existence in the Township of Winslow, and that seven of these licenses are within a radius of four miles from the Johnson premises. The population of Winslow Township, according to the 1940 Federal census, is 4,866. Hence there is one consumption license for each 195 residents. Compare ratio recently fixed by P. L. 1946, c. 147.

The Alcoholic Beverage Law, except in certain cases not here pertinent, vests in the governing board or body of each municipality the responsibility for administering the issuance of retail consumption licenses within their respective municipalities. R. S. 33:1-19.

Where the local issuing authority reaches the reasonable conclusion that a sufficient number of consumption licenses have been issued, it may wisely refuse to issue an additional consumption license. Bumball v. Burnett, 115 N. J. L. 254. The decision of a local issuing authority denying an application for a new license should not be reversed in the absence of clear and convincing proof that the decision below was arbitrary or unreasonable.

It cannot be said in the instant case that the respondent abused its discretion in refusing to issue the liquor license to appellant. It does not appear that any additional licenses are necessary to supply the few residents of this section of the Township or that the needs of transients may not be amply taken care of by the other licenses on the Williamstown-Tansboro Road and other roads in the vicinity of appellant's premises. Hence, the other reasons advanced by respondent for its action need not be considered herein. Respondent's action appears to have been neither arbitrary nor unreasonable and is, therefore, affirmed.

Accordingly, it is, on this 14th day of May, 1946,

ORDERED, that the petition of appeal filed herein be and the same is hereby dismissed.

ERWIN B. HOCK
Deputy Commissioner.

2. APPELLATE DECISIONS - BOWDEN v. WINSLOW TOWNSHIP.

CHESTER BOWDEN,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF WINSLOW,
Respondent

ON APPEAL
CONCLUSIONS AND ORDER

Meyer L. Sakin, Esq., Attorney for Appellant.
Frank M. Lario, Esq., Attorney for Respondent.

This is an appeal from the denial of appellant's application for a plenary retail consumption license for premises located on the east side of Blue Anchor Road, approximately 2,000 feet north of Atco Road, in Tansboro, Winslow Township.

Winslow Township is described as having an area of approximately 58 square miles and included therein are many small communities. Among these communities is Tansboro, wherein the premises of Chester Bowden are situated. Tansboro, according to the testimony of several witnesses, has a population of between 600 and 900 persons.

Two witnesses produced by appellant testified that, in their opinions, the issuance of a liquor license would serve a public need and convenience to the people of Tansboro. One of these witnesses, Thomas H. Turner, is a son-in-law of appellant. Turner testified that the Blue Anchor Road on which the appellant's premises are located is a very busy highway to Atlantic City. He further testified that there is another licensed premises three-quarters of a mile from the proposed premises, and also one two miles from the proposed premises.

Among witnesses produced by the respondent were two clergymen and Frank Gargano, Winslow Township Clerk. The two clergymen voiced their objections to the granting of any additional licenses in the township on the ground that there are sufficient liquor establishments presently in existence to supply the needs of the local and transient population of the community. Reverend Earl A. Bowen, pastor of the Tansboro Methodist Church, which is located on the Blue Anchor-Berlin Road, testified that the church and school are located approximately 1/8 of a mile from the proposed premises. Gargano testified that there are twenty-five plenary retail consumption licenses in existence in the Township of Winslow, and that there are three of these licenses located in the Tansboro section of the Township. One of the licensed premises, he stated, is "about a mile from Bowden's premises; another "not quite a mile"; and a third "about two miles". The population of Winslow Township, according to the 1940 Federal census, is 4866. Thus, the ratio of consumption licenses to population is approximately 1 to 200. Compare ratio recently fixed by P. L. 1946, c. 147.

Among the reasons given by the members of the local issuing authority for the denial of the Bowden application was that, in their opinion, public convenience and necessity does not warrant the issuance of the license in question.

Where the local issuing authority reaches the reasonable conclusion that a sufficient number of consumption licenses have been issued it may wisely refuse to issue an additional consumption license. Bumball v. Burnett, 115 N. J. L. 254.

It cannot be said in the instant case that the respondent abused its discretion in refusing to issue the liquor license to appellant. It does not appear that any additional licenses are necessary to supply the needs of the residents of this section of the township or that the needs of any transients may not be amply taken care of by other licensees in Tansboro. Hence, any other reasons advanced by respondent for its action need not be considered herein. Respondent's action appears to have been neither arbitrary nor unreasonable and is, therefore, affirmed. Johnson v. Winslow (decided herewith).

Accordingly, it is, on this 14th day of May, 1946,

ORDERED, that the petition of appeal filed herein be and the same is hereby dismissed.

ERWIN B. HOCK
Deputy Commissioner.

3. DISCIPLINARY PROCEEDINGS - ORDER ESTABLISHING SUSPENSION PERIOD (SEE BULLETIN 685, ITEM 11).

In the Matter of Disciplinary Proceedings against

WILLIAM R. CZAPLICKI and CHARLES MEYERS
T/a ZANZIBAR
136 Sumner Avenue
Seaside Heights, N. J.,

Holders of Plenary Retail Consumption License C-10 issued by the Mayor and Council of the Borough of Seaside Heights, and transferred during the pendency of these proceedings to

CHARLES MEYERS and JOSEPH MEYERS

for the same premises.

ORDER

A plea of non vult was entered in this case to a charge alleging sale and service of alcoholic beverages to two minors. Because the licensed premises were then closed, the order of the State Commissioner dated November 20, 1945, suspending the license for a period of twenty days provided that the effective date of the suspension would be postponed until the premises were reopened for business in the Spring of 1946.

It now appears that the transferees, who obtained a transfer of the license subject to serving the penalty referred to herein, have resumed activity under the license.

Under the circumstances, the twenty-day penalty will be reimposed commencing Wednesday, June 5, 1946.

Accordingly, it is, on this 15th day of May, 1946,

ORDERED, that Plenary Retail Consumption License C-10, issued by the Mayor and Council of the Borough of Seaside Heights to William R. Czaplicki and Charles Meyers, t/a Zanzibar, for premises 136 Sumner Avenue, Seaside Heights, and transferred during the pendency of these proceedings to Charles Meyers and Joseph Meyers, be and the same is hereby suspended for twenty days, commencing at 2:00 a.m. June 5, 1946, and terminating at 2:00 a.m. June 25, 1946.

ERWIN B. HOCK
Deputy Commissioner.

4. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR A PERIOD OF 25 DAYS.

In the Matter of Disciplinary Proceedings against

AUGUST ROSSI
24 Moonachie Avenue
Moonachie Borough
P.O. RFD Wood-Ridge, N. J.,

Holder of Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of Moonachie.

CONCLUSIONS AND ORDER

August Rossi, Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded guilty to a charge alleging that he possessed illicit alcoholic beverages at his licensed premises, in violation of R. S. 33:1-50.

On April 11, 1946, an investigator of the State Department of Alcoholic Beverage Control tested, in defendant's premises, his entire open stock of whiskey which consisted of three bottles. One of these bottles was labeled "Private Stock", one bottle labeled "Carstairs White Seal Blended Whiskey", and one bottle labeled "Imperial Hiram Walker's Blended Whiskey". When the field tests indicated that the contents of the two latter bottles were not genuine as labeled, the investigator seized said bottles. At that time the defendant verbally admitted that he had at least partially refilled the "Carstairs" and "Imperial" bottles with "Private Stock".

An analysis by the Department chemist warrants the conclusion that the "Carstairs" and "Imperial" bottles had been refilled completely with a natural colored young whiskey and that no part of the original contents remained in said bottles.

The defendant's plea offers a written admission in accordance with his former verbal statement. It is obvious that this licensee's customers had no chance of getting what they ordered unless they asked for "Private Stock". Retail licensees are not permitted to "refill" bottles. They must see that a customer gets what he orders. Re Chapman, Bulletin 701, Item 13.

Defendant has no prior record. Ordinarily where the case involves only two bottles and there is no previous record, the license is suspended for a period of fifteen days. Re Nurse, Bulletin 680, Item 7. The instant case, however, is aggravated by the fact that the two bottles found to be "refilled" constituted two-thirds of the defendant's open stock. In view of the aggravating circumstances, I shall impose a penalty herein of twenty-five days. Were it not for the meager open stock of the defendant, I would give a more severe penalty. Cf. Re Rulli, Bulletin 677, Item 9.

Accordingly, it is, on this 14th day of May, 1946,

ORDERED, that Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of Moonachie to August Rossi, for premises 24 Moonachie Avenue, Moonachie Borough, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 3:00 a.m. May 20, 1946, and terminating at 3:00 a.m. June 14, 1946.

ERWIN B. HOCK
Deputy Commissioner.

5. APPELLATE DECISIONS - DeMARINO v. ROXBURY TOWNSHIP.

SILVIO DeMARINO, Appellant, -vs- TOWNSHIP COMMITTEE OF THE TOWNSHIP OF ROXBURY, Respondent	ON APPEAL CONCLUSIONS AND ORDER

Milford Salny, Esq., Attorney for Appellant.
Howard F. Barrett, Esq., Attorney for Respondent.

This is an appeal from the denial of the application of appellant for a plenary retail distribution license for premises located at Center Street, Port Morris, in the Township of Roxbury.

The reasons advanced for reversal of the action of the respondent are: The respondent acted contrary to law and not in accordance with the duty imposedupon it to insure the proper administration of the Alcoholic Beverage Control Act; the applicant has met all the necessary requisites, both personally and relating to the premises, and no valid reason exists for the denial of the application.

The answer filed by respondent is to the effect that there are enough licensed premises in the municipality; that, on February 14, 1946, the date of the denial of the within application, an ordinance was introduced at a meeting of the Township Committee and received first reading, by the terms of which the number of plenary retail distribution licenses in the Township was fixed at five, and that there are now already existing in the Township five plenary retail distribution licenses.

The population of Roxbury Township, according to the 1940 census, is 4,555. Thus, the ratio of distribution licenses to population is greatly in excess of the ratio recently established by P. L. 1946, c. 147. The population of the Port Morris section, where the licensed premises are located, consists of between 250 and 300 inhabitants. According to the testimony, there is presently no plenary retail distribution license issued and outstanding in the Port Morris section but there is one plenary retail distribution license located in Netcong, an adjoining municipality, about three-quarters of a mile distant from the proposed licensed premises. A plenary retail consumption license has been issued by respondent in the Port Morris section, located about one-quarter of a mile distant from appellant's premises. A plenary retail consumption licensee may sell alcoholic beverages in original containers for off-premises consumption.

At the meeting of February 14, 1946, three applications for plenary retail distribution licenses were presented to the Township Committee. Two of them, including the appellant's application, were denied, and the third, that of one Peter Arendusky, for a license at premises located at Landing, was approved. Testimony indicates that the Arendusky premises are located about one mile distant from the premises of the appellant. No testimony was offered as to the

situation at Landing, nor was any testimony offered as to the reason for approving the one application in preference to the other two. No allegation as to undue preference is made.

The Clerk of the municipality testified that final action on the proposed ordinance has been deferred pending the disposition of the within appeal.

While the ordinance limiting the number of plenary retail distribution licenses has not received final approval, nevertheless, in the absence of anything to the contrary, it must be presumed that the ordinance was introduced in good faith and expressed a policy theretofore existing. The question of the number of licenses has always been left primarily to the sound discretion of the issuing municipality. No one is entitled to a liquor license as a matter of right. However, in cases of this nature, where the ordinance has not been finally adopted until after the denial of the application, the appellant should have and has had an opportunity to contest the reasonableness of the municipal regulation and its application to him. Widlansky v. Highland Park, Bulletin 209, Item 7. The principal reasons advanced to show the need for appellant's license are that there is no such license issued or outstanding in this particular section of the municipality and that the application is supported by a petition signed by numerous residents of that particular community. Obviously, this is insufficient to overcome the presumption of reasonableness of the respondent's action since the Port Morris section contains only 250 or 300 people and now is serviced by a plenary retail consumption license which may sell package goods for off-premises consumption.

The remaining question to be considered is whether the selection of the applicant Arendusky for the issuance of a license was the result of bias or favoritism and tended to prejudice the rights of the appellant. No such allegation is made, nor does any of the proof offered indicate this to be the case. The burden of proof to establish the unreasonableness of respondent's action, or to show any prejudice on the part of the issuing authority, is on the appellant. In both instances he has failed to sustain the required burden of proof. The action of the respondent is, therefore, affirmed, and the appeal is dismissed.

Accordingly, it is, on this 15th day of May, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

6. ILLEGAL CONTRACTS - TIED HOUSES - INTEREST OF RETAILER IN BREWERY - AGREEMENT BINDING RETAILER TO TAKE PRODUCTS OF BREWERY IN FUTURE PROHIBITED.

April 25, 1946

New Jersey Alcohol Beverage Commission
Newark, New Jersey.

Dear Sirs:

One of our clients, a small brewery, is considering entering into contracts with its distributors, incorporating the following general provisions:

1. The distributor will agree to purchase a minimum of a certain number of half barrels of beer or ale during each year for a period of five years from the date of the contract. A schedule as to the amount which the distributor will purchase during each month of the year is also included.

2. The brewery agrees to sell these minimum amounts to the distributors subject, however, to the possibility that its production may be reduced by reason of governmental regulations, rules or orders, or other circumstances beyond its control. In such case the output of the brewery will be apportioned to all of its distributors.

3. As security for the performance of the contract the distributor deposits with the brewery a sum equal to $2.50 for a half barrel of beer based upon one year's minimum purchases.

4. In accordance with OPA regulations the brewery agrees to allow interest upon the deposit at the rate of 5%, such interest to accumulate and be added to the amount of the deposit.

5. The deposit plus accumulated interest is credited against purchases during the fifth year of the contract at the rate of $2.50 per half barrel.

6. The price to be charged by the brewery shall be its OPA ceiling price and in the event that such ceilings are removed or OPA regulation is otherwise terminated, the price is to be the 1941 price plus an increase based upon the increased cost of labor and materials since that date, plus increases in taxes since that date.

7. After the contract has been in effect for one year the brewery has the right to cancel upon thirty days' notice and upon the return of the deposit plus accumulated interest.

8. The contract requires the distributor to make a deposit of $6.00 a half barrel to cover the return of the barrels. This deposit is made from time to time as the barrels are taken, and is credited upon the return of the barrels.

Although we know of nothing in your regulations which would conflict with or prohibit the making of such form of contract, our client is naturally anxious that there be no violation of your regulations. I should, therefore, appreciate it if you would let us know whether or not we are correct in our interpretation that such contract does not, by the inclusion of the above terms, violate any regulation, rule or order of your Department.

Very truly yours,

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May 15, 1946.

Dear Sirs:

I have your letter dated April 25th.

It is assumed that the term "distributors" refers to persons holding retail licenses issued in accordance with the provisions of the Alcoholic Beverage Law of New Jersey.

The net effect of the proposed contracts would be that the licensed retailers would be financing the brewery for a period of from one to four years, to the extent of $2.50 each for the minimum number of half-barrels to be purchased during the first year of the contract. In return, the retailer would receive five per cent. interest and a supply of beer at the usual prices.

The intent of R. S. 33:1-43 is to divorce completely the manufacturing and wholesaling of alcoholic beverages from the retailing of alcoholic beverages. Your plan would give the retailer an interest in the brewery to the extent of the money he advanced. Moreover, any plan which would bind a retailer to take the products of a certain brewery in the future in order to obtain beer during these days of shortage would be contrary to the public interest. Cf. Re Hogan, Bulletin 196, Item 14. Hence I must disapprove your proposed plan.

Such a contract between a brewery and a State Beverage Distributor would also be objectionable because R. S. 33:1-11(2)(c) provides that a State Beverage Distributor's license shall not be issued to any person directly or indirectly interested in any brewery within or without this State.

For your information, I have recently advised representatives of a number of small breweries that contracts somewhat similar in terms to the contract mentioned in your letter could not be approved.

Very truly yours,
ERWIN B. HOCK
Deputy Commissioner.

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the matter of Disciplinary Proceedings against)

ROSE E. BURNS
W/S Del Sea Drive below Fox Run Rd.) CONCLUSIONS
Deptford Township AND ORDER
P.O. R.F.D., Sewell, N. J.,)

Holder of Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Deptford.)

- - - - - - - - - - - - - - - - - - - -

Hannold & Hannold, Esqs., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded non vult to a charge alleging that she possessed illicit alcoholic beverages at her licensed premises, in violation of R. S. 33:1-50.

On March 15, 1946, investigators of the State Department of Alcoholic Beverage Control seized a 4/5 quart bottle labeled "Calvert Special Blended Whiskey" when their field test disclosed that the contents of said bottle were not genuine as labeled.

Subsequent analysis by the Department chemist leads to the conclusion that the said bottle had been partly refilled with another alcoholic beverage.

The defendant denies any knowledge of the "refilling" and says that she cannot account for the condition of this bottle.

The personal innocence of a licensee does not excuse the offense. The gravamen of the violation is "possession". Re Barrale, Bulletin 705, Item 5. It has been repeatedly pointed out that a retail licensee is not permitted to have in his or her stock any alcoholic beverages not genuine as labeled. Cf. Re Barrale, supra.

The minimum suspension for so-called "one-bottle" cases is fifteen days. Re Rudolph, Bulletin 680, Item 1. However, defendant's license was suspended for ten days in 1944, following a conviction before the local issuing authority on a charge of sales to minors. I shall, therefore, suspend the license for twenty days. Re Rule, Bulletin 709, Item 6.

Accordingly, it is, on this 16th day of May, 1946,

ORDERED, that Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Deptford to Rose E. Burns, W/S Del Sea Drive below Fox Run Rd., Deptford Township, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. May 22, 1946, and terminating at 2:00 a.m. June 11, 1946.

ERWIN B. HOCK
Deputy Commissioner.

8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against

HIGHLAND PARK LIQUORS, INC.
T/a PARK LIQUORS
437 Raritan Avenue
Highland Park, N. J.,

Holder of Plenary Retail Consumption License C-5, issued by the Borough Council of the Borough of Highland Park.

CONCLUSIONS AND ORDER

Sol L. Kesselman, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant corporate licensee, through its attorney, pleads not guilty to a charge alleging that it possessed illicit alcoholic beverages on its licensed premises, in violation of R. S. 33:1-50.

On December 20, 1945, an inspector of the Federal Alcohol Tax Unit, Internal Revenue Service, seized on defendant's licensed premises a 4/5 quart bottle labeled "Carstairs White Seal Blended Whiskey" and a 4/5 quart bottle labeled "Schenley Reserve Blended Whiskey" when his field tests indicated that the contents thereof were not genuine as labeled. Subsequent analyses by a Federal chemist confirmed the finding of the inspector. The Federal chemist testified that the whiskey in question varied in color, proof, and solid and acid content when compared with the analyses of genuine samples of the respective brands. He further testified that the analyses of the contents of the seized bottles were similar, indicating to him that both bottles had been refilled with the same type whiskey which was a different brand from the labels shown on the bottles.

David Resnick, president of defendant corporation, disclaimed any knowledge of the violations, both as to himself and on behalf of his employees. Nonetheless, the chemist's testimony, which has not in any way been refuted, disclosed that the bottles in question contained liquor not genuine as labeled. I find the defendant guilty of the charge preferred herein.

Defendant has no previous adjudicated record. Hence, I shall suspend its license for a period of fifteen days. Re Lane, Bulletin 707, Item 6.

Accordingly, it is, on this 16th day of May, 1946,

ORDERED, that Plenary Retail Consumption License C-5, issued by the Borough Council of the Borough of Highland Park to Highland Park Liquors, Inc., t/a Park Liquors, for premises 437 Raritan Avenue, Highland Park, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 1:30 a.m. May 22, 1946, and terminating at 1:30 a.m. June 6, 1946.

ERWIN B. HOCK
Deputy Commissioner.

9. APPELLATE DECISIONS - HARTY v. DELAWARE TOWNSHIP (CAMDEN COUNTY)

EDWARD WILLIAM HARTY,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF DELAWARE (CAMDEN COUNTY),

Respondent

ON APPEAL
CONCLUSIONS AND ORDER

Mark Marritz, Esq., Attorney for Appellant.
Bruce A. Wallace, Esq., Attorney for Respondent.

This is an appeal from denial of appellant's application for a plenary retail consumption license for premises located on Route 40 and Grove Street, Delaware Township.

On February 11, 1946, respondent adopted a resolution denying appellant's application. The resolution, contrary to our recommended procedure, did not state any reason for denial. However, it appears from the answer filed herein that the application was denied principally because "evidence was produced before the members of the Township Committee which satisfied them that *** the applicant had no control, custody or jurisdiction over the premises sought to be licensed."

At the hearing herein appellant testified that the premises are owned by his mother. The premises have been licensed for the sale of alcoholic beverages continuously during the past eleven years. On January 15, 1946, one Jane V. Butler, who then held a plenary retail consumption license for the premises in question, died. It appears that the administrator of the estate of Jane V. Butler applied to respondent for an extension of the license for the balance of its term, in accordance with the provisions of R. S. 33:1-26. This application was denied. Thereafter appellant applied to respondent for the license which is the subject of this appeal.

When the resolution denying appellant's application was adopted, there seems to have been some question as to whether the administrator of the estate of Jane V. Butler continued to have the right of possession of the premises in question. At the hearing herein, a letter from the administrator of said estate, dated March 27, 1946, was introduced into evidence, which indicated that he intended to relinquish any right of possession of the licensed premises. The attorney for appellant has advised me by telegram received May 15, 1946 that respondent is now willing to issue the license to appellant. I assume, therefore, that the members of the Township Committee are satisfied that the appellant is now in possession and control of the premises for which he seeks the license. A licensee must be in possession and control of his licensed premises. Rittinger v. Bordentown, Bulletin 547, Item 10. Under the circumstances, I shall remand the case to respondent for the purpose of reconsidering the application upon the evidence as to the right of possession now available to respondent.

I find no merit in the other reasons for denial set forth in respondent's answer.

Accordingly, it is, on this 16th day of May, 1946,

ORDERED, that the proceedings herein be and the same are hereby remanded to respondent for its further consideration consistent with law and this opinion.

ERWIN B. HOCK
Deputy Commissioner.

10. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against

MICHAEL JOSEPH ARNONE, JR.
T/a MICHAEL'S BAR
172-172A Monmouth Street
Red Bank, N. J.,

Holder of Plenary Retail Consumption License C-22, issued by the Borough Council of the Borough of Red Bank.

CONCLUSIONS AND ORDER

Haydn Proctor, Esq., by Robert Friedlander, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant-licensee pleads not guilty to a charge alleging that he possessed illicit alcoholic beverages on his licensed premises, in violation of R. S. 33:1-50.

An ABC investigator testified that, on September 7, 1945, he seized a 4/5 quart bottle labeled "Mount Vernon Brand Straight Rye Whiskey" after a preliminary test of the liquor indicated that the contents thereof were not genuine as labeled. The agent further testified that the bottle had a cork in it and that when he called to the attention of the defendant what his analysis of the whiskey revealed, defendant said, "It cannot be, I just opened that bottle a couple of days ago."

The Departmental chemist testified that he analyzed the whiskey in question and his analysis disclosed minute traces of added artificial coloring, six points under proof, and slightly low in solid and acid content, when compared with an analysis of a genuine sample of said whiskey.

Louis Kanengieser, a chemist employed by defendant, testified that he analyzed the contents of the bottle of whiskey in question and that his findings were similar to those of the Departmental chemist. When asked whether the liquor was genuine "Mount Vernon" liquor, he replied, "It is not. There is a difference in color, and that would make it not completely genuine."

The defendant attempted to show that there was a possibility that the coloring matter might have come from a pourer which was used in a brand of blended whiskey, and also the possibility that, as he claimed the bottle was opened for a considerable time and had a pourer inserted therein, the reduction in proof might have been caused by evaporation. However, the evidence produced by defendant was inadequate to substantiate either of these contentions. Defendant's statement, made at the time of the seizure, eliminates the question of possible evaporation. The conclusion reached by the chemists, based on their analyses of the bottle in question, that the contents thereof were not genuine as labeled, leaves me no alternative other than to find the defendant guilty as charged.

Defendant has no previous adjudicated record. I shall suspend his license for a period of fifteen days. Re Nurse, Bulletin 680, Item 7.

Accordingly, it is, on this 16th day of May, 1946,

ORDERED, that Plenary Retail Consumption License C-22, issued by the Borough Council of the Borough of Red Bank to Michael Joseph Arnone, Jr., t/a Michael's Bar, for premises 172-172A Monmouth Street, Red Bank, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. May 22, 1946, and terminating at 2:00 a.m. June 6, 1946.

ERWIN B. HOCK
Deputy Commissioner.

11. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT STILL ORDERED FORFEITED - PADLOCKING WAIVED.

In the Matter of the Seizure on April 6, 1946, of a still at premises owned and occupied by Joseph Lewis Tampkin, located on the Lakewood-New Egypt Road, in the Township of Jackson, County of Ocean and State of New Jersey.	Case No. 6972 ON HEARING CONCLUSIONS AND ORDER

Joseph Lewis Tampkin, Pro se.
Harry Castelbaum, Esq., appearing for the Department of Alcoholic Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 2 of the Revised Statutes, to determine whether a still and a quantity of alcoholic beverages, itemized in a schedule attached hereto, seized on April 6, 1946 at premises owned and occupied by Joseph L. Tampkin, located in Jackson Township, N. J., constitute unlawful property and should be forfeited, and further to determine whether the premises should be padlocked.

The State Department of Alcoholic Beverage Control received information a short time before the seizure that an illicit still was being operated at the premises in question. Accordingly, agents of the aforesaid department obtained a search warrant, which they executed on the day in question.

There is a two-story stucco building on the premises. The first floor was used for the storage of automobiles and building material, and the second floor was used by Tampkin as his living quarters. He was at home when the agents searched the premises. When the agents found the still and illicit alcohol in his attic, he admitted that he had operated the still to manufacture the alcoholic beverages. The agents seized the still and alcoholic beverages and arrested Tampkin.

The still was not registered with the State Commissioner of Alcoholic Beverage Control, as required by R. S. 33:2-1. Hence, such still, and alcoholic beverages seized therewith in the building, constitute unlawful property and are subject to forfeiture. In addition, the premises are subject to padlocking. R. S. 33:2-3, R. S. 33:2-5.

When the matter came on for hearing, pursuant to R. S. 33:2-4, Joseph L. Tampkin appeared and sought to avoid padlocking of the premises. He did not oppose forfeiture of the still and alcoholic beverages.

According to Mr. Tampkin's sworn testimony, he has been constructing the building piece-meal for the past six years and it is still unfinished. His wife has been dead about two years and he has had to

devote much of his time to the care of his three children, the eldest of whom does not appear to be over five years of age. He is a carpenter and this is the only property he owns.

Mr. Tampkin apparently has no previous record for violating any liquor laws. It was merely a small still, not of the type generally used for the commercial manufacture of illicit alcohol. The premises provides shelter for his three children and himself. There is no definite evidence that he manufactured the illicit alcoholic beverages for sale. To deprive Tampkin and the infants of their home would indeed be a harsh penalty, out of proportion to his offense. The building will not be padlocked.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" hereinafter set forth, 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.

ERWIN B. HOCK
Deputy Commissioner.

Dated: May 17, 1946.

SCHEDULE "A"

1 - copper cooker
1 - cooler with copper coil
1 - length copper tubing
1 - copper funnel
4 - 1-gallon jugs of alcohol

12. APPELLATE DECISIONS - WILLIAMS ET AL. v. ATLANTIC HIGHLANDS AND RICHARD - APPLICATION FOR A WRIT OF CERTIORARI HAVING BEEN DENIED BY THE NEW JERSEY SUPREME COURT - ORDER ENTERED VACATING PREVIOUS STAY (SEE BULLETIN 700, ITEM 6).

ROY E. WILLIAMS, JR., R. EUGENE SHEARER and DONALD N. CORREAL,

Appellants,

-vs-

BOROUGH COUNCIL OF THE BOROUGH OF ATLANTIC HIGHLANDS and ANDREW RICHARD,

Respondents

ORDER

On March 8, 1946, the effective date of the Order cancelling the plenary retail distribution license of the respondent, Andrew Richard, for premises 60-62 First Avenue, Atlantic Highlands, was stayed, pending application to the New Jersey Supreme Court by the said respondent for a writ of certiorari. Such application was denied by a single Justice on March 26, 1946 and by the Supreme Court en banc on May 7, 1946. The stay will, therefore, be vacated and the licensee directed to cease all alcoholic beverage activity under said license, effective Monday, May 20, 1946.

Accordingly, it is, on this 17th day of May, 1946,

ORDERED, that the stay contained in the order herein, dated March 8, 1946, be and the same is hereby vacated; and it is further

ORDERED, that the said Andrew Richard shall cease all alcoholic beverage activity under the plenary retail distribution license issued to him for premises 60-62 First Avenue, Atlantic Highlands, effective Monday, May 20, 1946, at 6:00 a.m.

Edwin B. Hock
Deputy Commissioner.