

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

BULLETIN 758

APRIL 17, 1947.

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

BULLETIN 758

April 17, 1947.

1. APPELLATE DECISIONS - DELAWARE TAVERN INC. v. ATLANTIC CITY AND SPENCER.

DELAWARE TAVERN, INC., a New Jersey corporation, and ROSALIND GREENE,

Appellants,

-vs-

BOARD OF COMMISSIONERS OF THE CITY OF ATLANTIC CITY, and CORNELIUS N. SPENCER,

Respondents

ON APPEAL  
CONCLUSIONS AND ORDERS

Emerson L. Richards, Esq. and Morris Bloom, Esq., Attorneys for Appellants.

Leon Leonard, Esq., Attorney for Respondent Board of Commissioners. Kirkman, Mulligan & Harris, Esqs., by Frank P. Mulligan, Esq., Attorneys for Respondent Cornelius N. Spencer.

This is an appeal from the action of respondent Board of Commissioners, on July 5, 1946, whereby the Board rescinded its prior approval of a person-to-person transfer of a plenary retail consumption license, and approved an application for a place-to-place transfer of said license from 800 Arctic Avenue to 807 Arctic Avenue. The appeal is also filed from the action of respondent Board of Commissioners on July 25, 1946, whereby it granted an application for a "renewal" of said license for the present fiscal year for premises located at 807 Arctic Avenue, Atlantic City.

Rosalind Greene has owned the premises known as 800 Arctic Avenue for many years. In 1940 she leased the premises known as 800 Arctic Avenue to respondent Spencer, and thereafter he conducted business at said premises under a plenary retail consumption license and annual renewals thereof to and including the 1945-46 fiscal year. The lease under which Spencer occupied 800 Arctic Avenue for the 1945-46 fiscal year contained the following clauses:

"It is agreed between the parties that the retail liquor license now granted the within demised premises has been owned and controlled by the lessor for many years, that so long as the lessee occupies the within demised premises under the term of this lease or any renewal thereof, he will continue such license in his own name, free of any lien or encumbrance, and that said lessee shall not, at any time in the future, assign the same or attempt to transfer the same to any other premises, without the written consent of said lessor. And the lessee further agrees that upon the termination of the within lease or any renewal or extension thereof or upon any default in the terms hereof or any renewal or extension thereof to consent to a transfer of the said liquor license to the lessor or her nominee.

"The parties hereto agree that for the term of the within lease, there is to be no transfer of the liquor license to any other person by the owner of the within premises; and upon the termination of this lease, unless same is renewed, the liquor license herein reverts to the original owner."

The evidence herein shows that in July 1945 respondent Spencer signed a paper addressed to the Board of Commissioners of the City of Atlantic City which authorized the Board to transfer his license, but at that time the paper did not contain the name of any transferee. Delaware Tavern, Inc. was thereafter incorporated on January 26, 1946. On February 7, 1946, Delaware Tavern, Inc. filed with the Board of Commissioners of the City of Atlantic City an application for a person-to-person transfer to it of the license then held by Cornelius N. Spencer for 800 Arctic Avenue. This application had attached thereto and made part thereof the authorization which had been signed by Spencer in July 1945 and in which the name of "Delaware Tavern, Inc.", as transferee, had been subsequently inserted. The paper bearing the authorization had been obtained from Rosalind Greene by her attorney, who filed the application. An objection to the transfer was filed by respondent Spencer with the Board of Commissioners but, after a series of negotiations between the interested parties, the Board was verbally advised that a settlement had been reached between them. On June 28, 1946, respondent Board granted the application to transfer the license from Spencer to Delaware Tavern, Inc. It does not appear that this transfer was endorsed upon the license certificate prior to the expiration of the license at midnight June 30, 1946.

On July 5, 1946, after the license in question had expired by its terms, respondent Board passed a resolution rescinding its action taken on June 28, 1946, whereby it had transferred the 1945-46 license from Spencer to Delaware Tavern, Inc. On the same day, apparently without having taken any prior action thereon, respondent Board granted an application which had been filed on May 31, 1946 by Spencer for a transfer of his 1945-46 license from 800 to 807 Arctic Avenue. On July 25, 1946, respondent granted an application which had been filed on May 31, 1946 by Spencer for a "renewal" of his license for the present fiscal year at 807 Arctic Avenue. Hence this appeal.

I conclude that the action taken by the Board of Commissioners on July 5th and July 25th must be reversed for the following reasons: Having granted a transfer of the license on June 28, 1946, the Board had no jurisdiction, on its own motion, to reconsider its action which was essentially judicial in nature. Lantz v. Hightstown, 46 N.J.L. 102; White v. Atlantic City, 62 N.J.L. 644; Vanaman v. Adams, 74 N.J.L. 125; Plager v. Atlantic City, Bulletin 80, Item 11. It is apparent that the Board rescinded its action, not on the ground of fraud, but because it had been advised that the negotiations for settlement between the parties had not been successful. Likewise the Board had no power on July 5, 1946 to transfer the 1945-46 license from 800 to 807 Arctic Avenue because said license had previously expired by its term at midnight on June 30, 1946. At the time the Board acted upon the application for a transfer there was no longer any license in existence. Re Bowen, Bulletin 568, Item 13. The Board also had no power to grant a "renewal" of the license for the present fiscal year at 807 Arctic Avenue because an application for a license may not be considered as an application for renewal unless, among other things, it covers the same licensed premises as the expired license. R. S. 33:1-96, as amended by P.L. 1944, Chap. 187. The license now held by Spencer for 807 Arctic Avenue must be considered a new license and not a renewal of the license issued to him for the prior fiscal year for 800 Arctic Avenue. Admittedly, respondent Board, under its numerical limitation ordinances, had no power to issue a new license and, hence, I must cancel the license now held by Spencer.

Question remains as to the respective rights of the appellant Delaware Tavern, Inc. and respondent Spencer to obtain a renewal for

the present fiscal year of the license which expired by its terms at midnight on June 30, 1946. In Re Englander, Bulletin 314, Item 6, the Commissioner said:

"The adoption of a resolution authorizing the transfer by the municipal license issuing authority does not of itself automatically transfer a license. The license is not effectively transferred until it is endorsed by the clerk. See Re Volcker, Bulletin 140, Item 9."

Under the circumstances of this case it is apparent that, according to precedents heretofore established, the license was not effectively transferred to Delaware Tavern, Inc. before the license expired by its terms. However, in order to remove any possible doubt upon this question, I rule, upon my own motion, that the resolution adopted by the Board of Commissioners of the City of Atlantic City, dated June 28, 1946, which purported to transfer the license from Spencer to Delaware Tavern, Inc., was of no legal force or effect. This action is based upon the grounds that the transfer to the appellant, Delaware Tavern, Inc. was sought pursuant to the provisions of a lease which attempted to subject the license to the control of the landlord, which provisions were contrary to the policy of the law, and void; and the "consent" to the transfer, made under the invalid agreement, was not a valid consent within R. S. 33:1-26, and was fatally defective. See Walsh v. Bradley, 121 N. J. Eq. 359; Lachow v. Alper, 130 N. J. Eq. 588; Novack v. Krauz, 138 N. J. Eq. 241.

For the reasons aforesaid, I here set aside the resolution of the Board of Commissioners of the City of Atlantic City, dated June 28, 1946. This is done under the power conferred upon the Commissioner by R. S. 33:1-38, which grants to the Commissioner the power, upon appeal, "to make all findings, rulings, decisions and orders as may be right and proper and consonant with the spirit of this chapter."

The result is that Cornelius N. Spencer will be considered as the holder of a plenary retail consumption license for premises 800 Arctic Avenue as of midnight June 30, 1946. If he can arrange for possession of said premises, he may apply for renewal of his license at that address within thirty days from the date of this decision. Wardach v. Camden and Oreb, Bulletin 487, Item 4.

Accordingly, it is, on this 28th day of March, 1947,

ORDERED that the action of respondent issuing authority, on July 5, 1946, whereby it purported to rescind its former approval of a transfer of the license from Cornelius N. Spencer to Delaware Tavern, Inc., be and the same is hereby reversed; and it is further

ORDERED that the action of respondent issuing authority, on June 28, 1946, whereby it granted an application to transfer the license from Cornelius N. Spencer to Delaware Tavern, Inc., be and the same is hereby reversed, and it is further

ORDERED that the action of respondent issuing authority, on July 5, 1946, whereby it purported to transfer the license from 800 Arctic Avenue to 807 Arctic Avenue, be and the same is hereby reversed; and it is further

ORDERED that the action of respondent issuing authority, on July 25, 1946, whereby it purported to renew the license for the present fiscal year at premises 807 Arctic Avenue, be and the same is hereby reversed; and it is further

ORDERED that the license now held by Cornelius N. Spencer, for premises 807 Arctic Avenue, be and the same is hereby cancelled and declared null and void; that all operations under the aforesaid license cease immediately, and that the license certificate be surrendered to the Board of Commissioners of the City of Atlantic City for cancellation.

ERWIN B. HOCK  
Deputy Commissioner.

2. COURT DECISIONS - NEW JERSEY SUPREME COURT - PHILIP ROEY v. ERWIN B. HOCK, ACTING COMMISSIONER - CERTIORARI DENIED.

NEW JERSEY SUPREME COURT

PHILIP ROEY, t/a ROEY'S BAR, )  
Prosecutor, )  
-vs- )  
ERWIN B. HOCK, Acting Commissioner )  
of Alcoholic Beverage Control of )  
the State of New Jersey, )  
Defendant )  
----- )

Decided February 17, 1947  
(Not officially reported)

Milton Miller, Esq., Attorney for Prosecutor.  
Emerson A. Tschupp, Esq., Deputy Attorney General, Attorney for Defendant.

PARKER, J.:

I have considered the application for certiorari in the matter of Roey, Prosecutor, v. Acting Commissioner of Alcoholic Beverage Control which was argued before me on the 8th inst. and reach the following conclusion.

The case is under R. S. 33:1-77 which denounces in general terms the sale of liquor to a minor as a misdemeanor: but under R. S. 33:1-31 provides for "suspension or revocation" of a license for several reasons; among them, "violation of any of the provisions of this chapter".

The particular violation in this case was sale of liquor to a minor, which, as a matter of fact, seems to be admitted.

However, there is a proviso; and the question arises whether "all of the facts" mentioned in the proviso were "established", to wit:

(a) false representation by customer of his age in writing. This was not established.

(b) appearance of being of age in the "estimation of a prudent person". This was at least doubtful.

(c) sale in good faith relying on a written representation of age. There was no such written representation.

The result seems to be that the sale to a minor was established and that the defenses were not so established. Therefore the rule to show cause allowed in this matter will be discharged.

\* \* \* \* \*

NOTE: Following the above determination, prosecutor renewed his application for writ of certiorari before the Supreme Court en banc which, on March 20, 1947, denied the application without opinion.

3. DISCIPLINARY PROCEEDINGS - NEW JERSEY SUPREME COURT HAVING DENIED WRIT, ORDER ENTERED FIXING EFFECTIVE DATES OF SUSPENSION.

In the Matter of Disciplinary Proceedings against )

PHILLIP ROEY )  
T/a ROEY'S BAR )  
305 Main Street )  
Lakewood, N. J., )

O R D E R

Holder of Plenary Retail Consumption License C-11 issued by the Township Committee of the Township of Lakewood. )  
-----)

It appearing that by Conclusions and Order herein dated January 20, 1947, the license held by defendant was suspended for a period of twenty days (Bulletin 747, Item 3), and

It further appearing that said suspension was stayed in order to afford defendant herein an opportunity to apply for a writ of certiorari to review said Conclusions and Order, and

It further appearing that, on March 20, 1947, the Supreme Court of the State of New Jersey denied defendant's application for a writ of certiorari;

It is, on this 31st day of March, 1947,

ORDERED that the twenty-day suspension of License C-11, held by Phillip Roey, t/a Roey's Bar, for premises 305 Main Street, Lakewood, shall commence at 2:00 a.m. April 14, 1947, and terminate at 3:00 a.m. May 4, 1947, in lieu of the effective dates of said suspension fixed in the original Order herein.

ERWIN B. HOCK  
Deputy Commissioner.

4. DISCIPLINARY PROCEEDINGS - FAILURE TO KEEP PREMISES CLOSED AND OBSTRUCTING PUBLIC VIEW DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATIONS - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

JOHN J. PALUMBO )  
T/a FRANK'S PARK TAVERN )  
5400 Park Avenue )  
West New York, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-10, issued by the Board of Commissioners of the Town of West New York. )  
----- )

William J. Tomaso, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

The defendant pleaded non vult to charges alleging that, on Sunday, February 9, 1947, in violation of local regulations, he (1) failed to keep his licensed premises closed between 4:00 a.m. and noon, (2) he failed to keep the interior of his premises open to public view during those hours, and (3), in violation of R.S. 33:1-35, he hindered and failed to facilitate the investigation made at his licensed premises on said date.

The municipal regulations prohibit licensed premises from being open during the hours of 4:00 a.m. and noon on Sundays and require that, during those hours, there shall be a clear view of the bar from the public thoroughfare. On Sunday, February 9, 1947, shortly after 11:00 a.m., several ABC agents attempted to view the interior of defendant's tavern but were prevented from doing so by reason of drawn venetian blinds on the entrance doors, and a solid wood paneling obstructing the view from a show window to a height of six feet or more from the level of the sidewalk. It was necessary for one of the agents to support himself upon a vent pipe several feet from the ground before he could see above the paneling and into the interior of the tavern. When he did so, he noticed several men at the bar with drinks of alcoholic beverages in front of them. The defendant was behind the bar.

The agents then rapped on the doors and windows in an attempt to gain admittance but, although they identified themselves in loud voices to the defendant and also exhibited their official badges, it was at least ten minutes before the defendant permitted them to enter. In the meantime, the defendant had removed all evidence of the liquor served to the patrons and had washed the glasses. The defendant, in addition, was abusive, uncooperative and hindered the orderly processes of the investigation. When urged by his brother to adopt a more conciliatory attitude, the defendant said, "Why should I cooperate, they have nothing on me."

The violations of the local regulations set forth in the first two charges merit fifteen and five days, respectively. Cf. Re Vitrone, Bulletin 661, Item 5. On the third charge, I shall impose a fifteen-day penalty. Cf. Re Niewinski, Bulletin 549, Item 3. From the total thirty-five day penalty, five days will be remitted for the plea, leaving a net suspension of thirty days.

Accordingly, it is, on this 1st day of April, 1947,

ORDERED that Plenary Retail Consumption License C-10, issued by the Board of Commissioners of the Town of West New York to John J. Palumbo, t/a Frank's Park Tavern, 5400 Park Avenue, West New York, be and the same is hereby suspended for a period of thirty (30) days, commencing at 3:00 a.m. April 7, 1947, and terminating at 3:00 a.m. May 7, 1947.

ERWIN B. HOCK  
Deputy Commissioner.

5. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

FRED H. ROEMER )  
T/a BRASS RAIL )  
135 Washington Street )  
Hoboken, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-173, issued by the )  
Board of Commissioners of the )  
City of Hoboken. )  
----- )

Meehan Brothers, Esqs., by John J. Meehan, Esq., Attorneys for )  
Defendant-licensee. )

William F. Wood, Esq., appearing for Department of Alcoholic )  
Beverage Control. )

The defendant pleaded non vult to a charge alleging that, on February 9, 1947, he possessed an illicit alcoholic beverage, to wit, a 4/5 quart bottle of "Canadian Club Blended Canadian Whisky", which contains an alcoholic beverage not genuine as labeled, in violation of R. S. 33:1-50.

The usual fifteen-day penalty, with five days remitted for the plea, leaving a net penalty of ten days, will be imposed.  
Re Makutenas, Bulletin 755, Item 15.

Accordingly, it is, on this 1st day of April, 1947,

ORDERED that Plenary Retail Consumption License C-173, issued by the Board of Commissioners of the City of Hoboken to Fred H. Roemer, t/a Brass Rail, 135 Washington Street, Hoboken, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. April 7, 1947, and terminating at 2:00 a.m. April 17, 1947.

ERWIN B. HOCK  
Deputy Commissioner.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

PASCACK INN (a corp.) )  
34 Hawthorne Avenue )  
Park Ridge, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-5 issued by the Mayor and Council of the Borough of Park Ridge. )  
----- )

Defendant-licensee, by Albert Hebel, Pres.  
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

The corporate defendant, through its President, has pleaded non vult to a charge alleging that on January 23, 1947 it possessed illicit alcoholic beverages, to wit, two 4/5 quart bottles labeled "Teacher's Highland Cream Perfection of Blended Scotch Whisky", two 4/5 quart bottles labeled "Kentucky Tavern Straight Bourbon Whiskey", one 4/5 quart bottle labeled "Black and White Blended Scotch Whisky", and one 4/5 quart bottle labeled "Old Crow Brand Kentucky Straight Bourbon Whiskey", all of which contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

This is the first time that the defendant has been cited in disciplinary proceedings, although it appears that in March 1940 it received a warning from this Department for possessing a bottle of off-proof liquor. In view that almost seven years have elapsed since the warning was rendered, I shall not consider it in aggravation of the instant offense. Since there are six bottles involved herein, I shall impose a penalty of twenty-five days. Re Downie, Bulletin 702, Item 2. Five days will be remitted for the plea, leaving a net penalty of twenty days. Re Makutenas, Bulletin 755, Item 15.

Accordingly, it is, on this 1st day of April, 1947,

ORDERED that Plenary Retail Consumption License C-5, issued by the Mayor and Council of the Borough of Park Ridge to Pascaek Inn (a corp.), for premises 34 Hawthorne Avenue, Park Ridge, be and the same is hereby suspended for a period of twenty (20) days, commencing at 6:00 a.m. April 8, 1947, and terminating at 6:00 a.m. April 28, 1947.

ERWIN B. HOCK  
Deputy Commissioner.

7. DISCIPLINARY PROCEEDINGS - ORDER POSTPONING EFFECTIVE DATE OF  
SUSPENSION (SEE BULLETIN 758, ITEM 6).

In the Matter of Disciplinary )  
Proceedings against )

PASCACK INN (a corp.) )  
34 Hawthorne Avenue )  
Park Ridge, N. J., )

O R D E R

Holder of Plenary Retail Consump- )  
tion License C-5, issued by the )  
Mayor and Council of the Borough )  
of Park Ridge. )  
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BY THE COMMISSIONER:

An order having been entered herein on the 1st day of April, 1947, suspending the license held by defendant for a period of twenty days, commencing at 6:00 a.m. April 8, 1947, and terminating at 6:00 a.m. April 28, 1947, and

It appearing from an affidavit filed by Albert Hebler, President of defendant corporation, that on or before February 1, 1947, the Park Ridge Rotary Club had completed arrangements with defendant corporation for a dance and entertainment to be held at defendant's premises on April 11, 1947 for the benefit of the Tri-Borough Ambulance Fund, and

It further appearing that a large number of tickets have been sold for said dance and that numerous innocent persons would be inconvenienced by the suspension of defendant's license on said date;

It is, on this 3rd day of April, 1947,

ORDERED that the suspension of twenty days heretofore imposed in this proceeding, instead of becoming effective commencing at 6:00 a.m. April 8, 1947, shall, in lieu thereof, commence at 6:00 a.m. April 15, 1947, and terminate at 6:00 a.m. May 5, 1947.

ERWIN B. HOCK  
Commissioner.

8. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES POSSESSED WITH INTENT TO TRANSPORT UNLAWFULLY ORDERED FORFEITED - CASE OF WHISKEY RETURNED TO OWNER WHO DID NOT PARTICIPATE IN VIOLATION.

In the Matter of the Seizure )  
on August 14, 1946 of a Ford )  
truck and a quantity of beer and )  
whiskey and soda in the vicinity )  
of Broad and Hill Streets, in )  
the City of Newark, County of )  
Essex and State of New Jersey. )  
-----

Case No. 7030

ON HEARING  
CONCLUSIONS AND ORDER

Anthony Giuliano, Esq., Attorney for the Newark Lodge of Elks.  
Joseph Vitolo, Pro Se.  
Harry Castelbaum, Esq., appearing for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

This case involves the seizure, in front of the Elks Club, Broad and Hill Streets, Newark, of 52 cases of beer, a case of whiskey, about 20 cases of soda, and a Ford truck. The truck, in which the beer was to be transported, was seized because it was not licensed for that purpose by the State Department of Alcoholic Beverage Control.

The truck has since been returned. See Conclusions and Order entered in the case on November 14, 1946. Bulletin 738, Item 6.

The beer, although tax paid, nevertheless technically constitutes an illicit alcoholic beverage because it was to be unlawfully transported. The other beverages seized therewith are likewise subject to forfeiture. R. S. 33:1-1(i), R. S. 33:1-2, R. S. 33:1-66. The case of whiskey on the truck was inadvertently taken from the Club, and will be returned.

Decision as to whether the beer and soda should be forfeited, or returned to the claimant, Joseph Vitolo, was reserved because it was not satisfactorily established that the beer was purchased and being removed from the premises for a lawful purpose and that the law had been violated unknowingly. It was anticipated that a pending investigation on another aspect of the case might clarify these matters.

However, the investigation, when concluded, did not alter the situation. The record, as it now stands, fails to disclose any satisfactory explanation as to why the alcoholic beverages were being removed from the premises. In the absence of any convincing evidence that the alcoholic beverages were to be transported and used for a lawful purpose, the application for the return of all of the beverages must be denied. It is therefore not necessary to decide whether, as claimed, the alcoholic beverages were purchased for resale by a prospective licensee. In any event, such a purchase is also a violation of the law. The absence of convincing evidence that it was an unwitting violation likewise compels forfeiture of the beverages.

Accordingly, it is DETERMINED and ORDERED that the alcoholic and other beverages more fully described in Schedule "A" attached hereto (excluding the case of whiskey, which is to be returned to the Elks Club) constitutes unlawful property and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, 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  
Commissioner.

Dated: April 7, 1947.

SCHEDULE "A"

- 1225 - 12 oz. bottles of beer and ale
- 136 - qt. bottles of soda
- 192 - 12 oz. bottles of cola

9. APPELLATE DECISIONS - KINGSLEY ARMS v. ASBURY PARK.

KINGSLEY ARMS (a corporation), )  
 Appellant, )

-vs-

ON APPEAL  
CONCLUSIONS AND ORDER

CITY COUNCIL OF THE CITY OF )  
 ASBURY PARK, )  
 Respondent )

-----  
 Thomas D. Nary, Esq., Attorney for Appellant.  
 Charles Frankel, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appealed from a five-day suspension of its license issued for premises 1707 Kingsley Street, Asbury Park, by the City Council of the City of Asbury Park.

Respondent imposed the suspension after it had adjudged appellant guilty on charges of allowing, permitting and suffering bookmaking and gambling on or about the licensed premises, in violation of Rule 7 of State Regulations No. 20, and also in violation of Section 11(e) of Ordinance adopted by the City Council of the City of Asbury Park on May 12, 1946. On the filing of this appeal an Order was entered herein staying respondent's order of suspension until further order of the Commissioner.

A stipulation of discontinuance, signed by the attorneys for both parties, has been filed, wherein leave is requested to withdraw the appeal. No reason appearing to the contrary, the request to withdraw the appeal will be granted and the suspension imposed by respondent will be reinstated.

Accordingly, it is, on this 8th day of April, 1947,

ORDERED that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the five-day suspension by respondent of appellant's Plenary Retail Consumption License C-25, for premises 1707 Kingsley Street, Asbury Park (which suspension was held in abeyance pending disposition of the instant appeal), be restored to commence at 2:00 a.m. April 15, 1947, and terminate at 2:00 a.m. April 20, 1947.

ERWIN B. HOCK  
Commissioner.

10. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - SALE TO INTOXICATED PERSON - PERMITTING BRAWL AND DISTURBANCE - NUISANCE CHARGE DISMISSED - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against SILVER DOLLAR, INC. 69-71 Albany Street New Brunswick, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-4 issued by the Board of Commissioners of the City of New Brunswick.

Philip Blacher, Esq., Attorney for Defendant-licensee. Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded not guilty to the following charges:

"1. On Friday, November 1, 1946, between 10:00 a.m. and 2:00 p.m., you sold alcoholic beverages at your licensed premises to Pfc. Donald --- and Cpl. Walter ---, minors, in violation of R. S. 33:1-77.

"2. On the occasion aforesaid, you sold, served and delivered, and allowed, permitted and suffered the service and delivery of alcoholic beverages to Pfc. Donald --- and Cpl. Walter ---, persons under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon your licensed premises, in violation of Rule 1 of State Regulations No. 20.

"3. On Friday, November 1, 1946, between 10:00 a.m. and 2:00 p.m., you sold alcoholic beverages to Cpl. Daniel ---, a person actually or apparently intoxicated, and allowed, permitted and suffered the consumption of alcoholic beverages by such person on the licensed premises, in violation of Rule 1 of State Regulations No. 20.

"4. On Friday, November 1, 1946, at about 1:30 p.m., you allowed, permitted and suffered a disturbance and brawl in and upon your licensed premises, in violation of Rule 5 of State Regulations No. 20.

"5. On the aforementioned date, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance, in violation of Rule 5 of State Regulations No. 20."

As to charges (1) and (2): At the hearing Corporal Walter --- testified that he was born on December 15, 1927. He testified also that on November 1, 1946 he purchased or had purchased for him eight glasses of beer which he consumed on defendant's premises. His evidence is corroborated by other soldiers who were then present. John C. Fabian, defendant's bartender, testified that he did not see Cpl. Walter --- in the defendant's premises on the date in question, but his evidence is not sufficient to overcome the positive testimony given by the soldiers. The evidence is not sufficient to satisfy me as to the guilt of the defendant so far as Pfc. Donald --- is concerned. Hence I find defendant guilty as to charges (1) and (2) only so far as said charges concern Cpl. Walter ---.

As to charge (3): Cpl. Daniel --- testified that prior to 1:00 p.m. on November 1, 1946, he had had "ten shots of whiskey and about eight or nine beers". The record shows that he had been drinking heavily before he entered defendant's premises about 10:30 a.m. on the day in question and that eight or nine beers were served to him in defendant's premises within the two and one-half hours he remained there. Some of the witnesses verified the fact that the said corporal had been served and had consumed alcoholic beverages upon the licensed premises that day and the bartender, Fabian, admitted that he had served him a beer shortly before 1:00 p.m.

In describing the corporal's appearance and conduct, all of the soldiers referred to his voice, which they said was "loud", and his speech, which they said was "thick". They also stated that he was "slouchy", "eyes glary", and "red in the face". The corporal testified that "I imagine I was drunk"; another soldier said that he saw the corporal served while drunk; a third soldier said he was "drunk", and a fourth soldier "thought he was drunk".

I find defendant guilty as to charge (3).

As to charge (4): At approximately 1:00 p.m. on November 1, 1946, Cpl. Daniel ---, after an argument with a colored soldier, broke a glass and struck the latter with it, thereby causing severe and permanent injuries.

The testimony regarding the events leading up to this incident is somewhat obscure. Some of the witnesses claim only that they heard a "commotion" and then saw the aforementioned colored soldier bleeding about the face. Although the defense claimed that the incident happened suddenly, without opportunity for intervention, their own witnesses, including the bartender, testified that, before the cutting took place, an argument developed between the corporal aforementioned and a colored soldier other than the one who was ultimately injured. During the course of this argument the corporal was called one or more foul names. Apparently the soldier who was later injured then joined in the argument and, according to the bartender, "was needling" and "seemed like he wanted to punch" the corporal. In fact, one of defendant's witnesses testified that the said corporal took a lot of abuse and name-calling and that this lasted for two or three minutes.

It would, therefore, appear that the incident was not completely spontaneous, as claimed by the licensee, but was preceded by at least some argument, part of which was audible to one of defendant corporation's officers behind a partition in an adjoining room.

Moreover, the testimony shows that defendant permitted the corporal, who was apparently boisterous, to remain upon its licensed premises for at least two and one-half hours, drinking steadily to the point of obvious intoxication. As was said in Plikaytis v. Harrison, Bulletin 754, Item 1:

"Surely, where intoxicated persons are allowed to continue their drinking, or even remain on the licensed premises, the licensee can reasonably foresee that such persons may cause a brawl or disturbance. Since a person is held to intend the reasonably foreseeable consequences of his acts, licensees cannot disclaim responsibility for brawls and disturbances created by intoxicated patrons when their intoxication results from or is enhanced by their consumption of alcoholic beverages on the licensed premises where the disturbance occurs. This principle of responsibility has often been enunciated by this Department in brawl cases, starting in 1935."

I therefore find defendant guilty as to charge (4).

As to charge (5): Despite the finding of guilt on the aforementioned charges, defendant has no prior adjudicated record and, although it received a warning letter dated April 29, 1946 as to alleged "pick ups", I conclude that the evidence is not sufficient to establish that the place of business was conducted in such a manner as to become a nuisance. Hence I must dismiss charge (5).

In view of all of the circumstances, I shall suspend defendant's license for a period of sixty days.

Accordingly, it is, on this 7th day of April, 1947,

ORDERED that Plenary Retail Consumption License C-4, issued by the Board of Commissioners of the City of New Brunswick to Silver Dollar, Inc., for premises 69-71 Albany Street, New Brunswick, be and the same is hereby suspended for sixty (60) days, commencing at 2:00 a.m. April 14, 1947, and terminating at 2:00 a.m. June 13, 1947.

ERWIN B. HOCK  
Commissioner.

11. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - SUSPENSION, PREVIOUSLY STAYED, REIMPOSED UPON REOPENING OF BUSINESS.

In the Matter of Disciplinary Proceedings against  
HI-HAT BAR, INC.  
T/a HI-HAT BAR  
20 Main Street  
Keansburg, N. J.,  
Holder of Plenary Retail Consumption License C-5 issued by the Borough Council of the Borough of Keansburg.

O R D E R

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 Hi-Hat Bar, Inc., Bulletin 734, Item 5), and

It appearing that defendant is entitled to the benefit of the subsequently adopted policy whereby five days were remitted for a plea of guilty (Re Gelb, Bulletin 741, Item 8 and Bulletin 749, Item 2), and

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

It is, on this 9th day of April, 1947,

ORDERED that the suspension heretofore imposed be reduced from fifteen days to ten days, and that Plenary Retail Consumption License C-5, issued by the Borough Council of the Borough of Keansburg to Hi-Hat Bar, Inc., t/a Hi-Hat Bar, for premises 20 Main Street, Keansburg, be and the same is hereby suspended for ten days, commencing at 2:00 a.m. April 15, 1947, and terminating at 2:00 a.m. April 25, 1947.

ERWIN B. HOCK  
Commissioner.

- 12. AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - POSSESSION OF ILLICIT LIQUOR - LICENSEE PAID FINE OF \$100.00 IN CRIMINAL PROCEEDINGS - LICENSE PREVIOUSLY SUSPENDED FOR 90 DAYS IN DISCIPLINARY PROCEEDINGS - AUTOMATIC SUSPENSION LIFTED.

In the Matter of the Petition )  
of )

THOMAS GIANATOS )  
T/a LEGGS & MATHIS )  
410-12 Boulevard )  
Seaside Heights, N. J., )

ON PETITION  
CONCLUSIONS AND ORDER

To Lift the Automatic Suspension )  
of Plenary Retail Consumption )  
License No. C-17, issued by the )  
Mayor and Borough Council of the )  
Borough of Seaside Heights. )  
----- )

Edward F. Beers, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

It appears from the petition filed herein that on January 17, 1947, the licensee pleaded guilty in the Court of Quarter Sessions of Ocean County to a charge of possessing illicit alcoholic beverages and, as a result thereof, was fined the sum of \$100.00, which he has paid.

It further appears that on December 23, 1946, petitioner's license was suspended for a period of ninety days, commencing January 7, 1947, and terminating April 7, 1947, after he had pleaded guilty to certain charges including a charge of possessing illicit alcoholic beverages. Re Gianatos, Bulletin 743, Item 4.

Because of his conviction in the criminal proceedings, petitioner's license has been automatically suspended for the balance of its term. R. S. 33:1-31.1. The petition herein prays that the automatic suspension may be lifted.

Petitioner has no prior record. Under the circumstances, the suspension imposed in the disciplinary proceedings and the fine imposed in the criminal proceedings appear to be adequate punishment for the offenses committed. Hence the relief sought in the petition will be granted.

Accordingly, it is, on this 7th day of April, 1947,

ORDERED that the automatic suspension of License C-17, issued by the Mayor and Borough Council of the Borough of Seaside Heights to Thomas Gianatos, t/a Leggs & Mathis, for premises 410-12 Boulevard, Seaside Heights, be lifted, and said license is hereby restored to full force and operation, effective immediately.

ERWIN B. HOCK  
Commissioner.

## 13. STATE LICENSES - NEW APPLICATIONS FILED.

Julia Tengeri

T/a Atlantic Bottling Works

438-440 Grove St.

Perth Amboy, N. J.

Application filed April 9, 1947 for transfer of State Beverage Distributor's License SBD-179 from Julia Tengeri, Executrix of the Estate of Alex Tengeri, t/a Atlantic Bottling Works.

Roy Hullings

Route 25 and Hartford Road

Delran Township, R.D. Riverside, N. J.

Application filed April 15, 1947 for transfer of State Beverage Distributor's License SBD-213 from Shore Beverage Company, Inc., 502 Atkins Avenue, Neptune Township, N. J.

Shore Beverage Co., Inc.

502 Atkins Ave.

Neptune Township, N. J.

Application filed April 15, 1947 for transfer of Plenary Wholesale License W-79 from Roy Hullings, Route 25 and Hartford Road, Delran Township, R.D. Riverside, N. J.

Thomas Fornataro (SBD-37)

11 Nixon St., Buena Vista Township

Landisville, N. J.

Application for additional warehouse at 1021-23 Market St., Camden, N. J., filed April 15, 1947.

Goebel Brewing Company

2001 Rivard St.

Detroit, Michigan.

Application for Limited Wholesale License filed April 15, 1947.

International Brands, Inc.

Room 1121, 60 Park Place

Newark, N. J.

Application for Plenary Wholesale License filed April 16, 1947.

*Erwin B. Hoff*

Commissioner.