

BULLETIN 865

JANUARY 17, 1950.

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JERRY
Public Relations
BUREAU OF PUBLIC RELATIONS
New York, N. Y.

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 865

JANUARY 17, 1950.

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 30 - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MARTIN BECKER)
T/a BELL LIQUORS)
190 Broadway)
Long Branch, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution License D-5, issued by the Board of Commissioners of the City of Long Branch.)

-----)
J. Stanley Herbert, Esq., Attorney for Defendant-licensee.)
William F. Wood, Esq., appearing for Division of Alcoholic)
Beverage Control.)

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that he sold alcoholic beverages at retail below the minimum consumer price, and advertised alcoholic beverages for sale at retail at a price less than the said minimum consumer price, in violation of Rule 5 of State Regulations No. 30.

On October 7, 1949, an ABC agent purchased from defendant-licensee two 23-ounce bottles of San Jose Chilean Reisling Wine for \$1.75. On or about October 7, 1949, defendant displayed in his store window three bottles of the brand of wine in question indicating thereon a price of 98¢ per bottle. The agent also observed on a shelf inside the store three 23-ounce bottles of San Jose Chilean Reisling Wine bearing a price tag of 98¢ per bottle. The minimum consumer price for said item was 99¢ for a 23-ounce bottle as disclosed in the list of such prices then effective. The price of \$1.75 paid by the agent for two bottles of the wine was 23¢ below the minimum consumer price for two bottles of that particular brand.

Defendant alleges that he did not know the item was subject to Fair Trade. That is no excuse.

The minimum penalty for Fair Trade violations is ten days.
Re Nurse, Bulletin 847, Item 7.

Defendant has no previous adjudicated record. I shall, therefore, suspend his license for a period of ten days, less five days' remission for the plea entered herein, or a net suspension of five days.

Accordingly, it is, on this 9th day of January, 1950,

ORDERED that Plenary Retail Distribution License D-5, issued by the Board of Commissioners of the City of Long Branch to Martin Becker, t/a Bell Liquors, 190 Broadway, Long Branch, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. January 16, 1950, and terminating at 9:00 a.m. January 21, 1950.

ERWIN B. HOCK
Director.

2. DISCIPLINARY PROCEEDINGS - STATE BEVERAGE DISTRIBUTOR'S LICENSE - VIOLATIONS OF RULES 4(a) AND 5(b) OF STATE REGULATIONS NO. 39 - LICENSE SUSPENDED FOR 5 DAYS.

In the Matter of Disciplinary Proceedings against)

NATIONAL SODA BOTTLING WORKS, INC.)
32-36 West 21st Street)
Bayonne, N. J.,)

CONCLUSIONS AND ORDER

Holder of State Beverage Distributor's License SBD-162, issued by the Director of the Division of Alcoholic Beverage Control.)

National Soda Bottling Works, Inc., Defendant-licensee, by Chester A. Zaykowski, Secretary.
Anthony Meyer, Jr., Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that on seven different occasions in the months of August and September 1949, it failed to notify the Director that three different retail licensees were in default for payment of beer delivered, in violation of Rule 5(b) of State Regulations No. 39; and on two other dates in July and August 1949, it delivered alcoholic beverages for credit to a retail licensee who was then on the default list of the Division of Alcoholic Beverage Control, in violation of Rule 4(a) of State Regulations No. 39.

Defendant alleges that the violations were committed because of its failure to set up a proper set of books, due to the fact that its business is primarily a soft drink business and that the beer business is merely a "service to some of our customers". This, of course, is no excuse.

Defendant has further advised that it has taken the necessary steps to set up a set of books sufficient for the purpose of keeping it from future error. Defendant was afforded an opportunity of obtaining a special permit. See Bulletin 849, Items 1 and 3. Having failed to do so, the present proceedings were instituted.

Defendant has no prior record. Considering all the circumstances, and the plea herein, I shall suspend defendant's license for a period of five days. Re Gallo Wine Sales of New Jersey, Inc., Bulletin 861, Item 1.

Accordingly, it is, on this 9th day of January, 1950,

ORDERED that State Beverage Distributor's License SBD-162, issued by the Director of the Division of Alcoholic Beverage Control to National Soda Bottling Works, Inc., for premises 32-36 West 21st Street, Bayonne, be and the same is hereby suspended for a period of five (5) days, commencing at 12:01 a.m. January 16, 1950, and terminating at 12:01 a.m. January 21, 1950.

ERWIN B. HOCK
Director.

3. RECAPITULATION OF ACTIVITY FOR PERIOD FROM JULY 1, 1949 THROUGH DECEMBER 31, 1949 January 10, 1950

	JULY	AUG.	SEPT.	OCT.	NOV.	DEC.	TOTAL
ARRESTS:							
Licenses and employees	16	28	15	10	12	28	109
Bootleggers	1	5	1	1	2	3	13
ABC agent impersonator	15	22	13	9	10	25	94
	0	1	1	0	0	0	2
SEIZURES:							
Motor vehicles - cars	0	4	1	2	1	4	12
- trucks	0	0	1	1	1	1	4
Stills - over 50 gallons	0	0	4	1	1	3	9
- 50 gallons or under	2	1	1	2	2	1	9
Alcohol - gallons	.12	0	0	0	0	119.41	119.53
Mash - gallons	0	700.00	1,250.00	4,550.00	200.00	6,350.00	13,050.00
Distilled alcoholic beverages - gals.	3.75	10.42	57.93	12.53	98.21	9.79	192.63
Wine - gallons	44.22	4.42	51.97	.12	180.51	11.08	292.32
Brewed malt alcoholic beverages-gals.	61.65	248.18	21.05	16.79	2.71	33.68	384.06
RETAIL LICENSEES:							
Premises inspected	758	855	782	683	777	936	4,791
Premises where alcoholic beverages were gauged	723	647	892	689	704	726	4,381
Bottles gauged	12,618	12,451	15,542	12,335	11,642	12,865	77,453
Premises where violations found	19	48	40	24	37	28	196
Violations found	21	59	50	27	37	31	225
Type of violations found:							
Unqualified employees	6	33	27	8	8	4	86
Reg. #33 sign not posted	1	6	5	7	5	7	31
Other mercantile business	1	3	3	2	6	3	18
Probable fronts	3	3	2	1	1	3	13
Gambling devices	0	2	4	0	0	4	10
Prohibited signs	0	2	1	1	2	1	7
Improper beer taps	3	1	0	1	0	1	6
Disposal permit necessary	1	2	1	0	1	0	5
Other violations	6	7	7	7	14	8	49
STATE LICENSEES:							
Premises inspected	16	32	33	23	6	37	147
License applications investigated	22	11	12	11	6	12	74
COMPLAINTS:							
Complaints assigned for investigation	273	402	277	357	346	302	1,957
Investigations completed	282	461	310	373	429	328	2,183
Investigations pending	(140)	(133)	(133)	(172)	(127)	146	146
LABORATORY:							
Analyses made	105	101	114	175	142	153	790
"Shake-up" cases (alcohol, water & artificial color) - bottles	2	8	11	8	6	8	43
Liquor found to be not genuine as labeled - bottles	8	7	14	10	20	8	67
IDENTIFICATION BUREAU:							
Criminal fingerprint identifications	11	8	10	22	2	16	69
Persons fingerprinted for non-criminal purposes	349	265	180	229	132	101	1,256
Identification contacts made with other enforcement agencies	326	203	138	156	103	106	1,032
Motor vehicle identifications via N.J. State Police teletype	6	6	9	12	3	9	45
DISCIPLINARY PROCEEDINGS:							
Cases transmitted to municipalities	4	4	16	3	11	7	45
Violations involved:							
Sale during prohibited hours	3	0	4	1	6	3	17
Permitting brawls on premises	1	0	2	0	2	0	5
Permitting females to tend bar	1	0	0	0	0	1	2
Sale to minors	0	1	4	0	1	1	7
Permitting slot machines on premises	0	1	1	0	0	0	2
Permitting hostesses on premises	0	1	0	0	0	1	2
Permitting bookmaking on premises	0	1	0	1	1	1	4
Unqualified employees	0	1	0	0	0	0	1
Sale to intoxicated persons	0	0	6	0	1	0	7
Sale to non-members by clubs	0	0	1	1	4	1	7
Possessing contraceptives on premises	0	0	1	0	0	0	1
Hindering investigation	0	0	1	0	0	0	1
Permitting lottery activity on premises (numbers writing)	0	0	0	0	1	0	1
Sale outside scope of license	0	0	0	0	1	0	1

	<u>JULY</u>	<u>AUG.</u>	<u>SEPT.</u>	<u>OCT.</u>	<u>NOV.</u>	<u>DEC.</u>	<u>TOTAL</u>
DISCIPLINARY PROCEEDINGS (Cont'd)							
Cases instituted at Division	15	16	14	14	10	10	79
Violations involved:							
Possessing illicit liquor	3	3	6	2	2	1	17
Sale to minors	1	3	4	3	1	1	13
Sale during prohibited hours	2	3	2	2	3	0	12
Delivery without bona fide invoice	2	1	1	0	0	0	4
Fraud and front	1	2	0	2	1	0	6
Sale below Fair Trade price	1	0	0	1	2	3	7
Permitting immoral activity on prem.	1	0	0	0	1	0	2
Permitting bookmaking on premises	1	0	0	2	1	0	4
Permitting female impersonator on premises	1	0	0	0	0	0	1
Sale to non-members by clubs	1	0	0	0	0	0	1
Solicitor employed by retailer	1	0	0	0	0	0	1
Permitting brawls on premises	1	0	0	0	0	0	1
Permitting hostesses on premises	0	1	0	0	1	0	2
Mislabeled beer taps	0	3	0	1	0	0	4
Permitting pin ball machines on prem.	0	2	0	0	0	1	3
Purchase from improper source	0	1	0	0	0	0	1
Sale outside scope of license	0	0	1	0	2	1	4
Sale contrary to conditions of permit	0	0	1	0	0	0	1
Permitting slot machines on premises	0	0	1	0	0	0	1
Failure to afford view into premises during prohibited hours	0	0	1	0	1	0	2
Hindering investigation	0	0	0	1	0	0	1
Failure to report retailer in default	0	0	0	1	0	1	2
Delivery on credit to retailer in default	0	0	0	1	0	1	2
Aiding and abetting unlicensed sale	0	0	0	0	1	0	1
Employing unqualified person	0	0	0	0	1	0	1
Possessing contraceptives on premises	0	0	0	0	1	0	1
Failure to display license certificate	0	0	0	0	1	0	1
Advertising below Fair Trade price	0	0	0	0	0	1	1
Illegal activity connected with licensed premises	0	0	0	0	0	1	1
Conduct of sales promotion contest by wholesaler	0	0	0	0	0	1	1
Cases brought by municipalities on own initiative and reported to Division	4	7	4	16	5	7	43
Violations involved:							
Sale to minors	1	2	2	10	2	2	19
Sale during prohibited hours	2	2	0	5	0	2	11
Permitting noise on premises	1	0	1	0	1	0	3
Hindering investigation	1	0	0	0	0	0	1
Permitting bookmaking on premises	1	0	0	0	1	0	2
Permitting lottery activity (numbers)	1	0	0	0	0	0	1
Permitting brawls on premises	0	3	0	0	1	3	7
Permitting prostitutes on premises	0	1	0	0	0	0	1
Sale to intoxicated persons	0	0	1	0	0	0	1
Permitting immoral activity on prem.	0	0	1	0	0	0	1
Permitting gambling on prem. (dice)	0	0	0	1	0	0	1
Conducting business as a nuisance	0	0	0	0	0	1	1
HEARINGS HELD AT DIVISION:							
Total number of hearings held	29	34	34	35	27	35	194
Appeals	6	4	4	3	2	4	28
Disciplinary proceedings	9	16	17	16	11	13	82
Eligibility	8	9	8	6	8	10	49
Seizures	6	5	3	5	5	3	27
Tax revocations	0	0	1	0	1	5	7
Applications for license	0	0	1	0	0	0	1
PERMITS ISSUED:							
Total number of permits issued	5,789	1,124	994	1,499	1,518	799	11,723
Employment	1,722	289	149	140	96	75	2,471
Solicitors	2,765	124	116	157	95	56	3,313
Disposal of alcoholic beverages	151	105	116	100	122	89	683
Social affairs	337	447	411	418	441	230	2,284
Special wine	90	33	73	533	676	192	1,597
Miscellaneous	724	126	129	151	88	157	1,375

ERWIN B. HOCK, DIRECTOR

4. DISCIPLINARY PROCEEDINGS - ORDER SUSPENDING LICENSE STAYED BY AUTHORIZATION OF JUDGE OF APPELLATE DIVISION PENDING PROCEEDINGS TO REVIEW.

In the Matter of Disciplinary
Proceedings against:

JOSEPH BODNER
111 Washington Street
Newark 2, N. J.,

Holder of Plenary Retail Consump-
tion License C-897 for the 1948-49)
and 1949-50 licensing years,)
issued by the Municipal Board of)
Alcoholic Beverage Control of the)
City of Newark.)

O R D E R

BY THE DIRECTOR:

It appearing that the defendant has appealed to the Superior Court, Appellate Division, from the Conclusions and Order entered herein on January 4, 1950, suspending the plenary retail consumption license of the defendant for a period of twenty days commencing January 10, 1950; and it further appearing that application was made, pursuant to Rule 3:81-12, for a temporary stay before a single Judge of said court; and the said Judge having authorized the Director to enter an order staying the effect of said suspension upon condition that the defendant perfect his application for a pendente lite stay to be made before the said court on Monday, January 16, 1950;

It is, on this 10th day of January, 1950,

ORDERED that the suspension herein be and the same is hereby stayed upon condition that the defendant perfect his application for a pendente lite stay to be made before the Superior Court, Appellate Division, on Monday, January 16, 1950, and that said stay shall continue until a further order is entered herein.

ERWIN B. HOCK
Director.

5. APPELLATE DECISIONS - MONESSON v. LAKEWOOD (CASES NOS. 2 AND 3).

LOUIS MONESSON, t/a MONESSON'S LIQUOR SHOP,)

Appellant,)

-vs-)

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF LAKEWOOD,)

Respondent.)

ON APPEAL CONCLUSIONS AND ORDER

(Cases Nos. 2 and 3)

James R. Giuliano, Esq. and Joseph A. Citta, Esq., Attorneys for Appellant.

James J. Myers, Esq., Attorney for Respondent.

BY THE DIRECTOR:

Appellant is here appealing from respondent's action, on June 23, 1949, in revoking his plenary retail consumption license for the 1948-49 term for premises at 428 Clifton Avenue, Lakewood, N. J. He also appeals from respondent's failure to act on his application for renewal of his license for the current 1949-50 term.

The revocation was entered in disciplinary proceedings which respondent had brought against appellant, charging sale and service of alcoholic beverages to an actually or apparently intoxicated person and allowing, permitting and suffering such person to consume alcoholic beverages on the licensed premises, in violation of Rule 1 of State Regulations No. 20.

Previously, in this same cause, respondent had similarly revoked the license in question and appellant took appeal to me. In that prior appeal I found that, while the evidence amply sustained respondent's finding of guilt, it was necessary, however, to remand the matter to respondent for requisite redeliberation on the question of penalty. See Monesson v. Lakewood, Bulletin 847, Item 6. For a clear understanding of the reason and purpose of such remand, I may here recite the following excerpt from my Conclusions and Order in the prior appeal:

"As to penalty: During the 1942-43 fiscal year respondent suspended appellant's license for a period of twenty days for sales of alcoholic beverages to intoxicated persons. On March 12, 1945, the Commissioner suspended appellant's license for the balance of its term after appellant herein had pleaded non vult to a second charge alleging that he sold alcoholic beverages to an intoxicated person. Re Monesson, Bulletin 657, Item 2. This violation, therefore, is a third violation for selling to intoxicated persons.

"The penalty to be administered in a local disciplinary proceeding rests primarily within the sound discretion of the local issuing authority. On appeal the penalty will be reduced only under unusual circumstances. Starr v. Clementon, Bulletin 381, Item 2; Creston Holding Co. v. Belleville, Bulletin 544, Item 2. At the hearing herein Committeemen Miller and Armstrong testified that they voted to revoke the license because of appellant's previous record and because of other complaints they had received against him. At the time of the hearing Committeeman Burdge, who had voted to revoke the license, was confined to his home because of illness. However, an affidavit executed by him was presented at the hearing, wherein he says: 'If I were to judge this case

solely on the sworn testimony given and the consideration of his two previous violations, I would not have recommended a permanent revocation but would have voted for a lesser penalty in the nature of a substantial suspension.' At the hearing below Committeeman Curtis refrained from voting and it appears from his affidavit presented at the hearing that he refrained from voting because 'I felt that permanent revocation is a too severe penalty.' Committeeman Johnson, who voted for revocation, did not appear at the hearing herein.

"Under all these circumstances, and in view of the fact that statements made by certain residents at the hearing below as to unsatisfactory conditions in the same neighborhood, where at least two other licensed premises are located, were apparently considered improperly because this was a hearing on a charge and not a hearing on a renewal application, I have decided to remand the case to respondent solely upon the question of the proper penalty to be imposed. If respondent on reconsideration decides to revoke the license, then, of course, the license may not be renewed for the coming fiscal year. On the other hand, if respondent on reconsideration decides to modify the revocation to a substantial suspension, then the license, in the discretion of the respondent, may be renewed provided that the renewal is granted subject to said suspension or any unexpired portion thereof.

"Accordingly, it is, on this 17th day of June, 1949,

"ORDERED that the action of respondent in finding appellant guilty be and the same is hereby affirmed, and the case is remanded to respondent solely for the purpose of considering the proper penalty to be imposed."

In brief, then, the matter was remanded on the prior appeal because at least three of the four members of respondent who voted for revocation had, albeit in good faith, improperly considered various extraneous complaints of residents as pertinent on the question of penalty in the disciplinary proceedings in question. The remand was to enable respondent to reweigh and to fix in its sound judgment, strictly upon the basis of appellant's guilt in the present matter and his prior record, the extent of penalty to be imposed.

On such remand respondent, at its meeting of June 23, 1949, reached the present decision of revocation, again, as in the case of the original revocation, by a vote of 4-0. In the instant appeal appellant contends that in this new vote of revocation the members of respondent again put stock upon extraneous matters when reaching their decision. It appears that, at the hearing when respondent sat in redeliberation on the question of penalty, appellant's attorney and various other individuals spoke out on his behalf for avoidance of revocation and that several other individuals also arose and spoke out against him, one complaining of general conditions in the neighborhood in question where, in addition to appellant's establishment, two other taverns are located. What transpired at the aforesaid hearing is recited as follows in the official minutes thereof:

"The Matter of Disciplinary Proceedings against

Louis Monesson, t/a Monesson's Liquor Shop,
428 Clifton Avenue,
Holder of Plenary Retail Consumption License No. C-16,
was taken up at this time. The above matter and proceedings are held pursuant to certain Conclusions and Order dated June 17, 1949 made by Erwin B. Hock, Director, Department of Alcoholic Beverage Control, was remanded back to the Township Committee for penalty only.

"Mr. Rothstein, Counsel for Mr. Monesson stated that it was not Mr. Monesson's intention to remain in or continue the present business, that, if granted a license he will offer it for sale and transfer to some other location suitable and acceptable to the Township Committee and the residents in that section.

"Mr. Albert Spitzer, representing the Veterans Administration, spoke in favor of Mr. Monesson also Mr. McClorey, Vice-President of Ocean County Liquor Dealers Association, Mrs. Monesson wife of Mr. Louis Monesson and his Sister in Law spoke in favor of reversing the decision of the Township Committee.

"Mr. Edward Firsichbaum and Mr. Harry Hecht spoke against any change in the decision of the Committee.

"Mr. Ben Nathan stated that he had suffered plenty from the three saloons on that block.

"Mr. James J. Myers (Township Attorney) stated that the Committee should act only on the violation as contained in original charges, and take no recognition of anything that was said for or against this licensee, and only on the charges of 'Sale to an intoxicated or apparently intoxicated person' of alcoholic beverages, should be taken in consideration when action is taken.

"Mr. Armstrong offered the following resolution and moved its adoption:

"WHEREAS, by virtue of certain Conclusions and Order dated June 17, 1949 made by Erwin B. Hock, Director, State of New Jersey, Department of Law and Public Safety, Division of Alcoholic Beverage Control, on appeal made by Louis Monesson, trading as Monesson's Liquor Shop, Appellant, vs The Township Committee of the Township of Lakewood, wherein among other things it was ordered that the above case was to be remanded to the Township Committee solely for the purpose of considering the proper penalty to be imposed; and

"WHEREAS, pursuant to said Conclusions and Order, the Township Committee at its regular meeting, Thursday, June 23, 1949, in the presence of the said Louis Monesson and his attorney, Edward M. Rothstein, Esq., properly did consider the same according to said Conclusions and Order;

"NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Lakewood that the Plenary Retail Consumption License No. C-16 issued to Louis Monesson trading as Monesson's Liquor Shop, for premises located at 428 Clifton Avenue, Lakewood, New Jersey, be and the same is hereby permanently revoked effective as of June 30, 1949, at 12 o'clock midnight, Daylight Saving Time.

On Roll Call -

"Affirmative -

Mr. Armstrong, Mr. Johnson,
Mr. Miller and Mr. Burdge.

"Negative -- none --

"The Resolution being duly adopted with Mr. Curtis passing."

The hearing on the present appeal contains evidence that one of the four Committeemen, in voting for revocation on the remand, may still have considered matters dehors the record. However, there is a complete lack of probative evidence to impeach the vote of the other three members. No adequate evidence is adduced to lead to the view that these three members ignored or mistook the point of my remand. So far as appears, they heeded the sound advice of their municipal attorney, as above quoted in the official minutes of the meeting, and reached the new decision of revocation in good conscience on the basis of appellant's guilt in the present matter and his record of two prior convictions in disciplinary proceedings for the same type of offense.

Respondent is a five-man committee. On the original and present vote of revocation, only four members participated, all voting for revocation in both instances. While it is true, as already indicated, that one of the Committeemen voting for the present revocation may, in his own mind, have taken extraneous matters into account, nevertheless, since the other three are unimpeached in their present vote for such revocation and since they constitute a majority of the quorum which was acting (and, in fact, a majority of the committee), I see no fair point in, or adequate ground for, invalidating the revocation.

As to extent of the penalty, I cannot, since this is appellant's third conviction in disciplinary proceedings for the same type of offense, viz., sale to an intoxicated person, characterize the revocation as being necessarily excessive or in abuse of respondent's discretion.

In light of the foregoing, respondent's present action in revoking appellant's license must be affirmed. In view of such affirmation, appellant is ineligible to hold or receive any other license for a period of two years from the effective date of the revocation. R.S. 33:1-31. Hence, respondent had and has no alternative except to deny appellant's application for a renewal of his license for the present licensing year. Pirone v. Weehawken, Bulletin 782, Item 5; Bill Bloch Inc. v. Union City, Bulletin 787, Item 7. In order to complete its records, respondent should promptly adopt a resolution formally denying the application for renewal and authorizing payment of a refund to appellant of ninety per cent. (90%) of the fee deposited with the application for renewal. R.S. 33:1-25.

Accordingly, it is, on this 10th day of January, 1950,

ORDERED that the action of respondent Township Committee, taken on June 23, 1949, be and the same is hereby affirmed, and that both appeals herein be and the same are hereby dismissed.

ERWIN B. HOCK
Director.

6. DISCIPLINARY PROCEEDINGS - CHARGE AS TO FALSE STATEMENT IN LICENSE APPLICATION DISMISSED - DEFENDANTS FOUND GUILTY OF AIDING AND ABETTING NON-LICENSEE TO EXERCISE RIGHTS AND PRIVILEGES OF LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against

SAM & ROSS COSTELLO
T/a COSTELLO'S BAR & GRILL
315-317 Washington Avenue
Woodbine Borough, N. J.,

Holders of Plenary Retail Consumption License C-1 for the 1948-49 fiscal year, issued by the Mayor and Borough Council of the Borough of Woodbine, and transferred during the pendency of these proceedings to and renewed for the 1949-50 fiscal year by

ROSS & LEO COSTELLO
T/a COSTELLO'S BAR & GRILL,
for the same premises.

CONCLUSIONS
AND
ORDER

Harry Tenenbaum, Esq., Attorney for Defendant-licensees.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendants pleaded not guilty to charges (dated April 29, 1949) alleging that (1) in their license application dated September 22, 1948, they failed to reveal that Leo Costello had an interest in the license applied for and the business to be conducted thereunder, and (2) since October 12, 1948, they permitted Leo Costello to exercise the privileges of their license.

On October 12, 1948 the license in question was placed in the names of Sam and Ross Costello, father and son, respectively. Leo Costello, also Sam's son, was then a resident of Pennsylvania and thus ineligible to hold a liquor license in this state. See R.S. 33:1-25.

From the present record, it appears that Leo Costello moved to New Jersey about December 1, 1948. There is no proof that prior to that time Leo had any prohibited interest in the license or business conducted thereunder and, therefore, the first charge will be dismissed.

In a written statement (Exh. S-3) taken on January 19, 1949 in the presence of Ross, Leo admitted having an interest in the licensed business and, on March 23, 1949, he stated in a written deposition (Exh. S-4), witnessed by Ross, that he was an "equal partner" in the licensed business and that he was entitled to an equal share of the "profits". On the latter date, Ross swore to a written statement (Exh. S-2) in which, among other things, the following appears:

"Q Isn't it true Leo is an equal partner in the business?

A Yes, he devotes as much time as I do in the business.

Q Has there been any profits from this business?

"A No profits divided, but we are saving funds to take care of our obligations.

Q How will the profits be divided? Will Leo share equal?

A After our obligations are met, we will divide profits equal among the three of us."

Reference to Ross' statement makes it abundantly clear that Leo was permitted to exercise the privileges of the license, then held by Sam and Ross, at least since March 23, 1949, even if Leo's statements are disregarded. The defendants are, therefore, guilty of the second charge.

On June 13, 1949, the license was transferred to Ross and Leo Costello, subject to the outcome of these proceedings. See also Rule 3 of State Regulations No. 16. Since there is nothing presently in the record to indicate that Leo suffered any statutory disqualification at the time his interest in the license and business was acquired, the usual twenty-day penalty for a violation of this nature will be imposed. Cf. Re Cohen et als., Bulletin 804, Item 10.

Although this proceeding was instituted during the 1948-49 licensing period, it does not abate but remains fully effective against the renewal license for the 1949-50 licensing period. State Regulations No. 16.

Accordingly, it is, on this 10th day of January, 1950,

ORDERED that Plenary Retail Consumption License C-1, issued for the current licensing year by the Mayor and Borough Council of the Borough of Woodbine to Ross and Leo Costello, t/a Costello's Bar & Grill, 315-317 Washington Avenue, Woodbine, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. January 18, 1950, and terminating at 2:00 a.m. February 7, 1950.

ERWIN B. HOCK
Director.

7. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT STILL, EQUIPMENT AND MOTOR VEHICLE ORDERED FORFEITED - BUILDING PADLOCKED - APPLICATION OF OWNER OF MOTOR VEHICLE FOR ITS RETURN DENIED.

In the Matter of the Seizure on) Case No. 7523
October 16, 1949, of a still and)
various still equipment and a Buick)
Sedan on the premises in the vicinity) ON HEARING
of Harding Highway and Madison Avenue,) CONCLUSIONS AND ORDER
in the Township of Franklin, County of)
Gloucester and State of New Jersey.)

Dominic J. D'Amico, Esq., Attorney for Rubin Marion Mack.
Harry Castelbaum, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 2, Revised Statutes of New Jersey, to determine whether a still and various still equipment and a Buick sedan, itemized in a schedule attached hereto, seized on October 16, 1949, on premises owned and occupied by Elmer D. Smith, located in the vicinity of Harding Highway and Madison Avenue, in the Township of Franklin, County of Gloucester and State of New Jersey, constitute unlawful property and should be forfeited, and further to determine whether the premises should be padlocked.

It appears that ABC agents, investigating a complaint that there was an illicit still at the premises, found and seized such a still in a building about 500 feet distant from Elmer D. Smith's dwelling. Shortly after the agents discovered the still, a Buick sedan arrived at the scene and the occupants, apparently discovering the presence of the agents, abandoned the car and escaped despite pursuit by the agents. There was evidence in the car that it had been used in connection with the operation of a still.

The still was not registered with the Director of Alcoholic Beverage Control as required by R.S. 33:2-1 and, therefore, constitutes unlawful property. Such still, all equipment seized therewith, and the motor vehicle, are therefore subject to forfeiture and the premises subject to padlocking. R.S. 33:2-2, 5.

When the matter came on for hearing pursuant to R.S. 33:2-4, Rubin Mack appeared with counsel and sought return of the motor vehicle. No one appeared to contest forfeiture of the still and equipment or to oppose padlocking.

Mack does not contend that the facts concerning the seizure are other than those outlined. His claim is that he did not know or have any reason to suspect that his car was used in connection with illicit still activities.

Evidence has been presented which indicates that the motor vehicle is registered in the name of Rubin Mack. He testified that he is an automobile mechanic, uses the car in his work and also, on many occasions, loaned his car to customers of the establishment where he is employed, who paid him various amounts therefor. He further states that he loaned his car to one such customer known to him only as "Tony", who claimed that his car had been seriously damaged; that his acquaintance with this man was due solely to the fact that he had made repairs to his car over a period of about two years; that "Tony" told him he would use the car for about a week or ten days.

Mack was convicted in 1945 in Philadelphia in a local court on the charge of unlawfully possessing untaxed liquor. He says that this conviction came about when a customer left a car with him to be repaired and police officers found whiskey in the car, although he did not know it was there.

My authority to return property subject to forfeiture is confined to a case where it has been established to my satisfaction that the claimant acted in good faith and unknowingly violated the law. R.S. 33:2-7. It is a discretionary authority, intended to relieve innocent persons from forfeiture of their property.

In the instant case, it is unlikely that Mack entrusted his car for an extended period of time to a person whose name, residence and occupation were unknown to him. It is more probable that he is not disclosing the full story. In addition, some weight must be given to the fact that Mack was implicated in recent years in some form of illegal liquor activities. These circumstances cast a strong doubt that he was unaware that his car was to be used in connection with the operation of the illicit still in this state. His request for return of the car will, therefore, be denied.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and 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 Director of the Division of Alcoholic Beverage Control; and it is further

ORDERED that the building in which the still was seized on premises owned and occupied by Elmer D. Smith, located in the vicinity of Harding Highway and Madison Avenue, in the Township of Franklin, County of Gloucester and State of New Jersey, shall not be used or occupied for any purpose whatsoever for a period of six months commencing the 15th day of February, 1950.

ERWIN B. HOCK
Director.

Dated: January 12, 1950.

SCHEDULE "A"

- 1 - steam boiler
- 1 - steam pump
- 1 - water tank
- 1 - cooker
- 1 - copper column
- 1 - cooling tank
- 1 - set of copper coils and a tri-box
- 1 - 50-gal. tank
- 150 - lbs. of sugar
- 40 - lbs. of yeast
- 15 - 250-gallon hogsheads with mash
- 500 - lbs. of coke
- 1 - drum of molasses
- 2 - receiving tanks
- 8 - gallons of alcohol
- 6 - empty 50-gallon barrels
- 1 - empty 250-gallon hogshead
- 206 - empty 5-gallon cans
- 1 - Buick Sedan, Serial No. 2891242, Engine No. 63050040, Pa. 1949 Reg. 325Y2
- Miscellaneous personal property

8. NOTICE TO CHIEFS OF POLICE CONCERNED RE SPECIAL ELECTIONS IN VARIOUS MUNICIPALITIES COMPRISING THE SEVENTH CONGRESSIONAL DISTRICT OF NEW JERSEY.

January 16, 1950.

Pursuant to proclamation of the Governor of the State of New Jersey dated January 3, 1950, a special primary election and a special election will be held to fill the vacancy in the representation of New Jersey in the House of Representatives of the United States arising in the Seventh New Jersey Congressional District comprising municipalities in counties as follows:

<u>Bergen</u>	<u>Hunterdon</u>	<u>Passaic</u>	<u>Sussex</u>	<u>Warren</u>
Allendale	Alexandria	Ringwood	Andover	Allamuchy
East Paterson	Bethlehem	West Milford	Andover Twp.	Alpha
Emerson	Bloomsbury		Branchville	Belvidere
Fair Lawn	Califon		Byram	Blairstown
Franklin Lakes	Clinton		Frankford	Franklin
Garfield	Clinton Twp.		Franklin	Frelinghuysen
Glen Rock	Delaware		Fredon	Greenwich
Hackensack	East Amwell		Green	Hackettstown
Hillsdale	Flemington		Hamburg	Hardwick
Hohokus	Franklin		Hampton	Harmony
Lodi	Frenchtown		Hardyston	Hope
Mahwah	Glen Gardner		Hopatcong	Independence
Maywood	Hampton		Lafayette	Knowlton
Midland Park	High Bridge		Montague	Liberty
Montvale	Holland		Newton	Lopatcong
Oakland	Kingwood		Ogdensburg	Mansfield
Oradell	Lambertville		Sandyston	Oxford
Paramus	Lebanon		Sparta	Pahaquarry
Park Ridge	Lebanon Twp.		Stanhope	Phillipsburg
Ramsey	Milford		Stillwater	Pohatcong
Ridgewood	Raritan		Sussex	Washington
River Edge	Readington		Vernon	WashingtonTwp.
Rivervale	Stockton		Walpack	White
Rochelle Park	Tewksbury		Wantage	
Saddle River	Union			
Saddle River Twp.	West Amwell			
South Hackensack				
Upper Saddle River				
Waldwick				
Washington				
Westwood				
Woodcliff Lake				
Wyckoff				

The special primary election will be held on Tuesday, January 24, 1950 and the special election will be held on Monday, February 6, 1950.

Since these elections will be held in accordance with the provisions of the Election Law (R. S. Title 19), they are special elections within the contemplation of Rule 2 of State Alcoholic Beverage Regulations No. 20 which provides:

"No licensee shall sell or offer for sale at retail or deliver to any consumer any alcoholic beverages, or permit the consumption of any alcoholic beverages on the licensed premises, in any municipality in which a general, municipal, primary or special election is being held, while the polls are open for voting at such election."

Polling hours on both these special election days are the same as those fixed for primary and general elections, viz., 7:00 A. M. to 8:00 P. M. See R. S. 19:27-1.

Sale, service and consumption of alcoholic beverages on retail licensed premises and delivery by retailers to consumers on or off licensed premises during polling hours come within the rule.

R. S. 33:1-24 makes it your duty to enforce the rule. If you have not already done so, you should notify all retail licensees in your municipality of the requirements of the rule and its application to the two scheduled special election days.

If a violation is found, seize any alcoholic beverages involved as evidence and order the licensee to discontinue immediately. Report him to me for disciplinary proceedings, giving name, address, license number, time, nature and details of violation.

ERWIN B. HOCK
Director.

9. STATE LICENSES - NEW APPLICATION FILED:

Montreal-New York Express Limited
407 West 17th St.
New York, N. Y.

Application for Transportation License filed January 16, 1950.

ERWIN F. HOCK
Director.

10. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 30- PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

HARRY CONOVER)
203 Melrose Avenue & 300 N. New Hampshire Avenue)
Atlantic City, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Board of Commissioners of the City of Atlantic City.)

- - - - -)

Harry Conover, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he sold alcoholic beverages below the minimum consumer price, in violation of Rule 5 of State Regulations No. 30.

On December 17, 1949, George Conover, son of defendant, who was then acting as a clerk in defendant's licensed premises, sold two 4/5 quart bottles of Seagram's Seven Crown Whiskey for the sum of \$7.80 to a private detective in the presence of an ABC agent. After the agent identified himself, George Conover verbally admitted that on December 3, 1949 he had made a sale of two bottles of the same product for the sum of \$7.80. The minimum consumer price, effective October 1, 1949, of a 4/5 quart bottle of Seagram's Seven Crown Whiskey was \$4.04.

Defendant has a prior record. Effective October 4, 1937, the local issuing authority suspended his license for a period of five days for possession of illicit alcoholic beverages, and effective October 11, 1948 the local issuing authority suspended his license for five days for selling alcoholic beverages during prohibited hours. In fixing a period of suspension herein I shall disregard the suspension which became effective on October 4, 1937, because of the lapse of time. However, because of the more recent suspension, I shall suspend defendant's license in this proceeding for a period of fifteen days. Five days will be remitted because of the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 12th day of January, 1950,

ORDERED that Plenary Retail Consumption License C-4, issued by the Board of Commissioners of the City of Atlantic City to Harry Conover, for premises 203 Melrose Avenue and 300 N. New Hampshire Avenue, Atlantic City, be and the same is hereby suspended for ten (10) days, commencing at 7:00 a.m. January 23, 1950, and terminating at 7:00 a.m. February 2, 1950.

Erwin J. Hoop
Director.