

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

BULLETIN 514

JUNE 8, 1942.

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - DELIBERATE AND INTENTIONAL VIOLATION - PREVIOUS SIMILAR OFFENSE - 25 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

HOBOKEN WINE & LIQUOR CO., INC.,
403 First Street,
Hoboken, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution License D-8 issued by the Board of Commissioners of the City of Hoboken.

John J. Meehan, Esq., Attorney for Defendant-Licensee.
G. George Addonizio, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleads guilty to the charge of having sold liquor at its store below the established Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

The facts are that on January 6, 1942 David Kramer, the Secretary of the defendant corporation, sold a gallon jug of Italian Swiss Colony "Special" California Haut Sauterne, a dry white wine, to an investigator of this Department for \$1.35, although the Fair Trade price for such item was then \$1.55. See Bulletin 480.

The defendant admits that Kramer made this sale in full knowledge that he was selling below the permissible price.

Were this a first offense I would, in line with my recently enunciated policy on deliberate Fair Trade violations, suspend the defendant's license for fifteen days, with five being remitted for the plea. See Re Samuel Vogel, Inc., Bulletin 493, Item 10; Re Washington Wine & Liquor Co., Bulletin 499, Item 9.

Since actually the defendant, in February 1941, had been found guilty of a prior Fair Trade violation at its store (Re Hoboken Wine & Liquor Co., Inc., Bulletin 445, Item 4), penalty in the present case will be "stepped up" to twenty-five days, less five for the plea, or a net of twenty days, to teach the defendant that the Fair Trade Regulations mean what they say.

Although in Re Stein, Bulletin 502, Item 1, I recently indicated that full thirty days, less five for the plea, may well be the proper penalty for a second Fair Trade violation which is deliberate, that case is presently up before the Department on a petition for reconsideration.

While a penalty in these "upper brackets" is indubitably heavy-fisted for even a second Fair Trade offense, it must be remembered that the Fair Trade Regulations serve a highly salutary purpose, and hence must be strictly enforced. For a full and apt description of the abuses which they are effectively eliminating, see the late Commissioner Burnett's remarks in Re Gaine, Bulletin 288, Item 9.

Accordingly, it is, on this 27th day of May, 1942,

ORDERED, that Plenary Retail Distribution License D-8, heretofore issued to Hoboken Wine & Liquor Co., Inc. by the Board of Commissioners of the City of Hoboken for premises 403 First Street, Hoboken, N. J., be and the same is hereby suspended for a period of twenty (20) days, commencing June 1, 1942, at 2:00 A.M. and concluding June 21, 1942, at 3:00 A. M. (Sunday).

ALFRED E. DRISCOLL,
Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - DELIBERATE AND INTENTIONAL VIOLATION - PREVIOUS SIMILAR OFFENSE - 25 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

HOLZ BROTHERS,
162 Newark Avenue,
Jersey City, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution License D-82 issued by the Board of Commissioners of the City of Jersey City.)

Gross and Gross, Esqs., Attorneys for Defendant-Licensees.
Abraham Merin, Esq., Attorney for State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendants have pleaded guilty to the charge of selling two one-gallon jugs of Manischewitz White Label American Malaga Wine (the Fair Trade price being \$3.98) for \$3.85, in violation of Rule 6 of State Regulations No. 30.

Departmental records disclose that the defendants were aware of the correct price and knew that the sale in question was made in violation of the Regulations.

This is the licensees' second violation of the Fair Trade rules, their license having been suspended in 1940 for a period of ten days, less five for the guilty plea. This time the suspension will be for twenty-five days, less five for the plea. If the licensees wish to continue in business, they must scrupulously refrain from any further violations.

Accordingly, it is, on this 27th day of May, 1942,

ORDERED, that Plenary Retail Distribution License D-82, heretofore issued to Holz Brothers by the Board of Commissioners of the City of Jersey City for premises 162 Newark Avenue, Jersey City, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 A. M. June 1, 1942, and concluding at 2:00 A. M. June 21, 1942.

ALFRED E. DRISCOLL,
Commissioner.

3. APPELLATE DECISIONS - ELIZABETH BEVERAGE DEALERS ASSOCIATION, DIVISION NO. 2 v. MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF ELIZABETH AND FENIK.

APPELLATE DECISIONS - PURCELL AND CAVALLA v. MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF ELIZABETH AND FENIK.

ELIZABETH BEVERAGE DEALERS)
ASSOCIATION, DIVISION NO. 2,)
Appellant,)

-vs-

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY OF)
ELIZABETH and ALEX T. FENIK,)
Respondents.)

ON APPEAL
CONCLUSIONS AND ORDER

HENRY PURCELL and LOUIS CAVALLA,)
Appellants,)

-vs-

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY OF)
ELIZABETH and ALEX T. FENIK,)
Respondents.)

William C. Egan, Esq., Attorney for Appellants.
Raymond A. Leahy, Esq., Attorney for Municipal Board of
Alcoholic Beverage Control of the City of Elizabeth.
Nathaniel J. Klein, Esq., Attorney for Respondent, Alex T. Fenik.
Samuel S. Ferster, Esq., Attorney for Elizabeth Bowl, owner
of premises.

BY THE COMMISSIONER:

Appellants in both of the above entitled cases appeal from the action of respondent Municipal Board in granting a plenary retail consumption license to respondent, Alex T. Fenik, for premises located at 562 North Broad Street, Elizabeth. At the hearing the two cases were consolidated. Since the issues in each case were substantially the same, they may be decided together.

Appellants allege that the action of respondent was erroneous in that the license in question was granted contrary to the provisions of a resolution adopted by the City Council of the City of Elizabeth on November 6, 1935, reading:

"BE IT RESOLVED, that no licenses whatsoever excepting renewals, shall be granted for any premises within the area of a circle having a radius of 1500 feet and having as its central point an existing licensed premises. In the event the holder of a license desires to transfer to another premises, he shall be permitted to do so within 1500 feet of the premises wherein he is located at the time of said transfer but shall comply with the provision aforementioned when transferring to premises over 1500 feet from his present location."

There is no dispute as to the facts. No question of renewal or transfer of a license is involved. On July 18, 1941 Alex T. Fenik filed with respondent Municipal Board his application for a new plenary retail consumption license for premises at 562 North Broad Street. On August 4, 1941 respondent Municipal Board, by a vote of two in favor and one against, granted said application and the license was subsequently issued. The aforesaid resolution of the City Council was in effect at all times considered herein. It appears from a map introduced into evidence that if any of the four circles be drawn, each having a radius of fifteen hundred feet and having as a central point an existing licensed premises, the premises known as 562 North Broad Street fall within the area of each of said circles. Thus, it appears that the license was issued in direct violation of the terms of the resolution.

Under the provisions of R. S. 33:1-40, the aforesaid resolution, which limits the number of licenses, was adopted by the governing board or body of the municipality prior to July 1, 1937 and remains in effect until repealed, amended or otherwise altered by ordinance. R. S. 33:1-19 provides that it is the duty of respondent Municipal Board to administer the issuance of retail licenses in accordance with "this chapter." Hence, unless the resolution is set aside in this proceeding, it is binding upon respondent Municipal Board until the City Council adopts an ordinance repealing, amending or otherwise altering the resolution. While the resolution remains in effect, respondent Municipal Board has no jurisdiction to grant any licenses in violation of the terms of the resolution. Bachman v. Phillipsburg, 68 N. J. L. 552; Hudson-Bergen County Retail Liquor Stores Association v. Loris and West New York, Bulletin 254, Item 10; Atlantic City Licensed Beverage Association v. Atlantic City and Adelman, Bulletin 296, Item 6; Crowley v. Atlantic City and Foxwell, Bulletin 455, Item 11.

While I may have the power, under the provisions of R. S. 33:1-41, to set aside the limiting resolution, that power will be exercised only in a case where it appears that the resolution is unreasonable in itself or as applied to any individual who alleges that he is aggrieved thereby.

As to the reasonableness of the resolution: Respondent Fenik, in his argument, places great stress upon the following language in the case of Fine v. Elizabeth, Bulletin 346, Item 18, wherein the same resolution was considered:

"The regulation above quoted was approved by me ex parte on November 18, 1935, subject, however, to appeal.

"Since then, in the light of later experience and because of the difficulty in applying such a rule and attempting to make such measurements, I will no longer approve areas measured by a circle having a certain radius and as its central point an existing licensed premises."

However, the language quoted above must be considered in connection with the powers of the governing body of each municipality and the powers of the Commissioner, as set forth in R. S. 33:1-40. That section provides that ordinances or resolutions regulating the conduct of any business licensed to sell alcoholic beverages at retail and the nature and condition of the premises upon which any such business is to be conducted are subject to the approval of the Commissioner first obtained. However, the present case does not concern an ordinance or resolution of that character. This case concerns a limitation of the number of licenses, which does not require the previous approval of the Commissioner. Strictly speaking, the previous approval or disapproval by the Commissioner of regulations limiting the number of licenses is merely advisory. The local governing board or body of any municipality may limit the number of licenses in the municipality with or without the Commissioner's prior approval. The ex parte approval or disapproval, if given, is subject to review on appeal. Bulletin 43, Item 12. Likewise, if an ordinance or resolution is continued in effect in disregard of changes suggested by the Commissioner, it is subject to review by him on appeal. In the present case, the City Council of Elizabeth has never seen fit to adopt an amending ordinance despite the Commissioner's suggestion in the Fine case. Hence it becomes necessary for me to pass upon the validity of the resolution in this appeal.

In the Fine case, despite the suggested change, the Commissioner affirmed the denial of the license. The same result was reached in Gural and Toplovich v. Elizabeth, Bulletin 153, Item 7. It should be pointed out that in both cases cited, respondent denied the application because the resolution discussed herein was considered to be binding. Respondent may not rely on the resolution in one case and ignore it in the next. That is not compatible with the administration of justice. I find that the resolution in question establishes a method of measuring distances which generally may be easily applied to the facts as in the present case; that, for the past six years, the resolution apparently has resulted in a distribution of licensed premises in accordance with the plan adopted by the City Council; and that no licenses have previously been granted in violation of the terms thereof. Under these circumstances, I find that the resolution is reasonable in itself.

Moreover, I find that the resolution is reasonable as applied to Fenik. It is true that he is using the license in connection with a bowling alley; that his business is generally confined to patrons of the bowling alley; and that he sells alcoholic beverages only during the evening and early morning hours. This evidence, however, is not sufficient to convince me that the resolution is unreasonable as applied to him. He obtained his license with full knowledge of the existence of the resolution. He stands in the same position as any other applicant for a similar type of license. While the result herein may be unfortunate

for respondent Fenik, the test to be applied concerns not the individual but the general welfare of the community. No one has a right to a liquor license. I am satisfied that the resolution in question promotes the general welfare of the community by preventing congestion of licensed places.

Respondent Municipal Board has argued that the resolution was a "rule for the guidance and convenience of that Board and was not a hard and fast rule that could be made available by the alcoholic beverage licensees." From what has been already said, it is clear that the resolution was binding upon the Municipal Board and was not intended merely for the "guidance and convenience" of said Board.

Since it appears that the Fenik license was issued in direct violation of a valid resolution of the City Council, it follows that respondent Board had no jurisdiction to issue the license. I shall, therefore, reverse its action and declare the license void.

Accordingly, it is, on this 27th day of May, 1942,

ORDERED, that the action of respondent, Municipal Board of Alcoholic Beverage Control of the City of Elizabeth, in issuing a plenary retail consumption license to Alex T. Fenik for premises known as 562 Broad Street, Elizabeth, be and the same is hereby reversed; and it is further

ORDERED, that said license be and the same is hereby declared void, effective June 1, 1942, at 2:00 A. M.; that all operations thereunder cease at that time; and that the license certificate be surrendered as soon as possible thereafter to the Secretary of the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth.

ALFRED E. DRISCOLL,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE BY CLUB LICENSEE DURING PROHIBITED HOURS - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)
EIGHTH WARD PROGRESSIVE)
REPUBLICAN CLUB,)
1727 Van Buren Street,)
Camden, N. J.,)
Holder of Club License CB-7,)
issued by the Municipal Board)
of Alcoholic Beverage Control)
of the City of Camden.)

CONCLUSIONS AND ORDER

Charles Edwards, Secretary of Eighth Ward Progressive Republican Club, for the Licensee.
Abraham Merin, Esq., Attorney for State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant, holder of a club license in Camden, has pleaded guilty to a charge of selling alcoholic beverages on its licensed

premises on Sunday, March 22, 1942, in violation of a Camden ordinance adopted December 27, 1934 prohibiting the sale of alcoholic beverages between 2:00 A. M. Sunday and 7:00 A. M. the following Monday.

In Re Democratic Club of the 11th Ward, Bulletin 495, Item 5, I dealt at length with violations of club licenses and therein enunciated the following points:

"1. Clubs which value the privileges extended to them must strictly adhere to the laws governing the dispensing of alcoholic beverages.

"2. That heretofore penalties imposed for violations by club licensees have not been commensurate with the seriousness of the violations.

"3. That in future cases club licensees who violate the laws could expect more drastic penalties."

Heretofore, the usual penalty for this offense was a five-day suspension of the license. See Re Laufer, Bulletin 421, Item 11.

Club licensees must be brought to a full realization of their responsibilities. They are not privileged to dispense alcoholic beverages with a half-hearted regard for regulations; but, rather, must be meticulous in their observance of the Rules and Regulations. In line with my statement in Re Democratic Club of the 11th Ward, supra, the license will be suspended for a period of fifteen days with a remission of five days for the plea.

Accordingly, it is, on this 28th day of May, 1942,

ORDERED, that Club License CB-7, heretofore issued to the Eighth Ward Progressive Republican Club by the Municipal Board of Alcoholic Beverage Control for premises located at 1727 Van Buren Street, Camden, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A. M., June 2, 1942, and concluding at 2:00 A.M., June 12, 1942.

ALFRED E. DRISCOLL,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - CONCEALING MATERIAL FACTS IN LICENSE APPLICATION - DISQUALIFIED PERSON (CITIZENSHIP) HOLDING BENEFICIAL INTEREST IN MORE THAN 10% OF CORPORATE STOCK - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT AFTER EXPIRATION OF 10 DAYS, UPON PROOF THAT DISQUALIFICATION HAS BEEN REMOVED.

In the Matter of Disciplinary Proceedings against)

ALBERTI'S, INC.,)
30-32 East Front Street,)
Trenton, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-126, heretofore issued by the Board of Commissioners of the City of Trenton.)
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J. Conner French, Esq., Attorney for Defendant-Licensee.
Richard E. Silberman, Esq., Attorney for State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant, holder of a plenary retail consumption license in Trenton, pleads non vult to charges which, for convenience, may here be summarized and restated as follows:

- (1), (2) and (3): In its license application the defendant, although listing Helen Kanzler as the holder of forty of the corporation's seventy-two shares of stock, concealed the fact that Julius Kanzler (her husband) was the real owner of those forty shares, such concealment being in violation of R. S. 33:1-25.
- (4) The defendant has permitted the said Julius Kanzler to exercise the rights and privileges of its license, in violation of R. S. 33:1-26, 52.

The facts are clear. The defendant corporation has seventy-two shares of stock outstanding. Forty of these shares, although really belonging to Julius Kanzler, were placed in the name of his wife, Helen Kanzler, to hold as a "dummy" for him. Apparently this was done because of the belief by members of the corporation that Kanzler, being a German alien, was disqualified from either holding a retail liquor license or owning more than ten per cent of the stock in any such corporate licensee in New Jersey.

Actually, Kanzler, by virtue of a reciprocal trade treaty between Germany and the United States, was not thus disqualified until recently, when the outbreak of war between this country and Germany resulted in abrogation of the treaty. See Re Aliens, Bulletin 491, Item 8.

However, whether or not Kanzler was qualified, the fact remains that the corporation, when applying for its license, concealed the real story as to the ownership of these forty shares of stock and continued to operate without disclosing the beneficial ownership of the stock. The fraudulent character of the concealment is evidenced by the fact that the corporation is not presently qualified to hold the license because Julius Kanzler, the indirect owner of more than ten per cent of its stock, is an alien. R. S. 33:1-12.1.

As to penalty: To prevent the continued operation of such business under this unlawful arrangement, the license will be suspended for the balance of its term. However, in view of the plea and the frank disclosure of facts on behalf of the defendant, this suspension may, on proper showing of a satisfactory and bona fide correction, be lifted after at least ten days of such suspension have been served in penalty for the instant violation. For similar disposition in such cases where the citizenship requirement is involved, see Re Lindeman, Bulletin 428, Item 10. Cf. Re Mania, Bulletin 507, Item 2; Re Steiner Inc., Bulletin 511, Item 3. For the Department's more stringent policy to be followed in this type case after July 1, 1942 (i.e., the commencement of the coming licensing year), see my Release of May 16, 1942.

Accordingly, it is, on this 28th day of May, 1942,

ORDERED, that Plenary Retail Consumption License C-126, heretofore issued by the Board of Commissioners of the City of Trenton to Alberti's, Inc. for 30-32 East Front Street, Trenton, be and the same is hereby suspended for the balance of its term, effective 2:00 A. M. June 2, 1942; and it is further

ORDERED, if it satisfactorily appears, on verified petition and proper proof, that the unlawful corporate arrangement herein has been fully and properly corrected, the said suspension will be lifted; provided, however, that in no event shall such suspension be lifted prior to the expiration of ten (10) days from the effective date of the suspension.

ALFRED E. DRISCOLL,
Commissioner.

- 6. DISCIPLINARY PROCEEDINGS - VIOLATION OF RULE 3 OF STATE REGULATIONS NO. 21 - 3 DAYS' SUSPENSION - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM ON TWO OCCASIONS - DELIBERATE AND INTENTIONAL VIOLATION - 20 DAYS' SUSPENSION - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS - 5 DAYS' SUSPENSION - TOTAL: 28 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

CLINTON AVE. LIQUOR & DELICATESSEN STORE, INC., 790 Clinton Ave., Newark, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-172, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Samuel Poleshuck, Esq., Attorney for Defendant-Licensee.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee pleaded guilty to charges alleging that:

- (1) On December 20, 1941 it displayed in its show window a sign larger than 1 1/2" x 1 1/2" advertising the price of an alcoholic beverage, in violation of Rule 3 of State Regulations No. 21;

(2) and (3). On February 10, 1942 it sold a pint bottle of Wilson "That's All" Whiskey below the minimum consumer price, and on February 17, 1942 it sold a quart bottle of the same liquor below the minimum consumer price, in violation of Rule 6 of State Regulations No. 30; and

(4) On Sunday, February 22, 1942, it sold an alcoholic beverage between 3:00 o'clock A. M. and 12:00 o'clock noon, in violation of local regulation.

As to (1): Defendant received its license on December 4, 1941 but did not commence the sale of liquor until December 19, 1941, the day before the violation was discovered. It then prominently displayed a sign 10" x 36" advertising the sale of wines at 21¢ a pint. The licensee pleads ignorance of the regulations, which, of course, cannot excuse the violation. However, in view of the circumstances, I shall impose a penalty of only three days on this charge.

As to (2) and (3): On February 10, 1942 an investigator of this Department purchased a pint bottle of Wilson "That's All" Whiskey for twenty cents less than the Fair Trade price. He returned to the licensed premises on February 17, 1942 and purchased a quart bottle of the same liquor for thirty-five cents below the Fair Trade price. It is admitted that both sales were made with knowledge that the fixed prices were higher than those charged. Since two separate infractions of the price regulations are here involved, I shall increase the usual minimum penalty of fifteen days for a first deliberate violation of this kind by five days, or twenty days in all on charges (2) and (3).

As to (4): At 9:50 A. M. on Sunday morning, February 22, 1942, an investigator of this Department purchased a bottle of liquor at the licensed premises. The local ordinance prohibits sales before 12:00 o'clock noon on Sundays. The license will be suspended for five days on this charge.

Within less than three months of licensee's entering the liquor business, it had violated the law on four separate and distinct occasions. This is perhaps a "track" record entitling the licensee to a twenty-eight day suspension, less five for the guilty plea, or a net suspension of twenty-three days.

Accordingly, it is, on this 29th day of May, 1942,

ORDERED, that Plenary Retail Distribution License D-172, heretofore issued to Clinton Ave. Liquor & Delicatessen Store, Inc. by the Municipal Board of Alcoholic Beverage Control of the City of Newark for premises 790 Clinton Avenue, Newark, N. J., be and the same is hereby suspended for twenty-three (23) days, commencing June 3, 1942, at 3:00 A. M. and concluding June 26, 1942, at 3:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

7. DISCIPLINARY PROCEEDINGS - SUSPENSION FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT UPON EXPIRATION OF 30 DAYS AND SATISFACTORY PROOF OF BONA FIDES OF LICENSE TRANSFER - 80 DAYS ELAPSED - PETITION BY TRANSFEREE TO LIFT AS AFORESAID GRANTED.

In the Matter of Disciplinary Proceedings against

DIEGO BARRESI,
T/a MISPAH HOTEL,
S. W. Cor. Estelle Ave.,
State Highway Route No. 48,
Hamilton Township (Atlantic County),
P. O. Mizpah, N. J.,

ORDER

Holder of Plenary Retail Consumption License C-27, issued by the Township Committee of the Township of Hamilton (Atlantic County), and transferred during the pendency of these proceedings to

ALMEDA HARRIS

for the same premises.

Richard S. Mischlich, Esq., Attorney for petitioner, Almeda Harris.

BY THE COMMISSIONER:

On March 6, 1942, I suspended the license herein for the balance of its term, effective March 10, 1942, after licensee had been found guilty of charges alleging, among other things, that he had permitted certain undisclosed persons to exercise the privileges of his license. In the order suspending the license, leave was given to lift the suspension after the expiration of thirty days from March 10, 1942, upon showing a correction of the unlawful situation. Re Barresi, Bulletin 499, Item 1.

A petition has now been presented to me by Almeda Harris, to whom the license in question was transferred, from which it appears that the license and business conducted thereunder have been sold to Almeda Harris and that she is the only person now interested in said license and business; that she is fully qualified to hold a license in her own right and that no one other than herself has any interest in her license or in the business conducted thereunder. It also appears that the transfer of the license to Almeda Harris was made subject to the entry of an order by me lifting the suspension heretofore imposed against this license.

Since it appears that the unlawful situation has now been corrected and that more than thirty days have elapsed since the suspension became effective,

It is, on this 29th day of May, 1942,

ORDERED, that the suspension heretofore imposed against Plenary Retail Consumption License C-27, issued by the Township Committee of the Township of Hamilton for premises S/W Cor. Estelle Avenue, State Highway Route No. 48, Hamilton Township (Atlantic County), be lifted, and it is hereby restored to full force and operation, effective immediately.

ALFRED E. DRISCOLL,
Commissioner.

8. DISCIPLINARY PROCEEDINGS - FALSE STATEMENTS IN LICENSE APPLICATIONS - SUPPRESSION OF MATERIAL FACTS (NON-RESIDENCE) - SITUATION CORRECTED - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

LOUIS SCHWARTZ,)
T/a MILITARY INN,)
N/E Cor. Fort Dix Road & Main St.,)
Wrightstown, N. J.,)

CONCLUSIONS AND ORDER

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

William T. Cahill, Esq., Attorney for Licensee.
William F. Wood, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads guilty to a charge alleging that:

"In your applications for license dated November 28, 1940 and June 17, 1941, upon which Plenary Retail Consumption License C-7 for the year 1940-41 and Plenary Retail Consumption License C-5 for the year 1941-42 were granted to you, you falsely stated 'Yes' in answer to Question 26 therein, which asks, 'Have you ...resided in New Jersey continuously during the five (5) years immediately preceding this application?!, whereas in truth and fact you were a resident of New York City until September 1936 and had not so resided; said false statements being in violation of R. S. 33:1-25."

Defendant appeared in opposition to a rule to show cause why his license should not be declared void because improvidently issued in that he had not been a resident of New Jersey for at least five years continuously immediately prior to the submission of his application for a license.

In both applications referred to in the charge, defendant answered "Yes" to the following question: "Have you and/or all persons mentioned in this application resided in New Jersey continuously during the five (5) years immediately preceding this application?". Defendant is alleged to have moved from New York to New Jersey in September 1936. He states that he has lived in this State continuously since that time. Thus, at present he appears to be fully qualified. However, the answers to the above questions were false. I can scarcely credit defendant's testimony that he made an honest mistake in answering these questions because he believed that his residence during part of each of the five years preceding his application entitled him to answer the question as he did. The question is not ambiguous.

As to penalty: Defendant has never been convicted of any previous violation. Since he is now fully qualified and since he has admitted his guilt with the explanation set forth above, I shall dismiss the rule to show cause. Because of the false answers, however, I shall suspend his license for fifteen (15) days, of which five (5) days will be remitted for the guilty plea.

Accordingly, it is, on this 29th day of May, 1942,

ORDERED that the rule to show cause herein be and the same is hereby dismissed; and it is further

ORDERED that plenary retail consumption license C-5, issued by the Borough Council of the Borough of Wrightstown to Louis Schwartz, t/a Military Inn, for premises located at the northeast corner of Fort Dix Road and Main Street, Wrightstown, be and the same is hereby suspended for a period of ten (10) days, commencing on June 3, 1942, at 2:00 A.M. and terminating on June 13, 1942, at 2:00 A.M.

ALFRED E. DRISCOLL,
Commissioner.

9. APPELLATE DECISIONS - HOOD v. MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF LINDEN.

Alfred Hood,)	
Appellant,)	On Appeal
-vs-)	
)	CONCLUSIONS AND ORDER
Municipal Board of Alcoholic Beverage Control of the City of Linden,)	
Respondent.)	
-----)	

Salvatore F. LaCorte, Esq., Attorney for Appellant.
Lewis Winetsky, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from a fifteen-day suspension of his license C-24 issued for premises at 50 E. Edgar Road, Linden. Respondent imposed the suspension on February 9, 1942, after it had found appellant herein guilty of the following charge:

"On December 12, 1941 you did permit and allow upon your licensed premises the rendering of services by persons not registered in the Record Bureau of the Police Department of the City of Linden. You did further permit and allow the rendering of services of a minor in violation of Article IV, Sections 1, 2, 3, 5 and 7 of the ordinance entitled 'An Ordinance to Regulate the Sale and Distribution of Alcoholic Beverages, Fixing License Fees and Providing Penalties for Violations Thereof,' adopted December 20, 1938 and amended June 20, 1939 and of the Revised Statutes and State Regulations."

Sections 1, 2, 3 and 5 of Article IV of the ordinance referred to in the charge are lengthy and, for the purposes of this case, need not be set forth in full. In substance, they provide that every agent, bartender, waiter or other employee connected with or employed by a licensee must register with the Police Department and, during the period of his employment, hold an identification card issued by the said department. Section 7 of Article IV of said ordinance provides:

"No licensee shall have in his employ anyone under the age of twenty-one years *** provided, however, that persons failing to qualify as to age, may with the approval of the State Commissioner, be employed by any licensee, but said employee shall not in any manner whatsoever sell or solicit the sale of any alcoholic beverages. ***"

The charge was preferred after a police officer of the City of Linden reported that on December 12, 1941 he had seen Tony Antonio wearing a white apron and washing glasses in the wash basin behind the bar of the licensed premises and had also seen Estelle Piaszyk washing dishes in a kitchen located to the rear of the barroom. It is admitted that, on December 12, 1941, neither Tony nor Estelle, who was then twenty years of age, had registered with the Police Department or then held an identification card.

Appellant contends herein that he never employed either Tony or Estelle and, hence, alleges that there was no violation of the ordinance or the State Regulations.

As to Tony: Appellant pleaded guilty below to the charge that he had employed Tony in violation of the terms of the ordinance. Under these circumstances, there is serious doubt as to appellant's right to raise the question of his guilt or innocence in this appeal. In any event, the evidence is sufficient to show that appellant unlawfully employed Tony.

As to Estelle: She testified at the hearing herein that she was never employed by appellant and that when the police officer called she was in the kitchen washing her hands. Appellant testified herein that Estelle was merely a customer and that he never employed her or gave her any money or free drinks. In addition, it appears that the kitchen in question was not part of the licensed premises. While I am satisfied that this minor is a frequent visitor at and invites her friends to the licensed premises, the evidence is not sufficient to sustain a finding that she was at any time employed by appellant. Hence, I find it necessary to reverse the finding of guilt in so far as Estelle Piaszyk is concerned.

The question remains as to whether the penalty imposed should be modified. In April 1941 the license of Alfred Hood was suspended by respondent for three days after he pleaded guilty to a charge of being open during prohibited hours. Notwithstanding the reversal as to the employment of Estelle, the fifteen-day penalty is not unreasonable in view of appellant's previous record.

The action of respondent is affirmed.

Accordingly, it is, on this 29th day of May, 1942,

ORDERED that the fifteen-day suspension heretofore imposed by respondent and held in abeyance pending disposition of this appeal, is hereby restored, to commence on June 3, 1942, at 2:00 A.M. and to terminate June 18, 1942, at 2:00 A.M.

ALFRED E. DRISCOLL,
Commissioner.

10. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - DELIBERATE AND INTENTIONAL VIOLATION - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

ABRAHAM WEISS and HERMAN HOCHBERG, 236 Market St., Newark, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-59 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

Daniel G. Kasen, Esq., Attorney for Defendant-Licensees. Abraham Merin, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were served upon the licensees, alleging that:

"1. On or about January 27, 1942, without having first obtained a special permit so to do, you sold a quart bottle of Wilson 'That's All' Whiskey below the minimum consumer price published in Bulletin 483 of this Department, in violation of Rule 6 of State Regulations No. 30.

"2. On or about January 30, 1942, without having first obtained a special permit so to do, you sold a quart bottle and one-half gallon bottle of Wilson 'That's All' Whiskey below the minimum consumer price published in Bulletin 483 of this Department, in violation of Rule 6 of State Regulations No. 30."

Licensees pleaded not guilty to the first charge and guilty to the second charge.

As to (1): An investigator of this Department testified that on January 27, 1942 he purchased a quart bottle of Wilson "That's All" Whiskey for \$2.50, or fifty cents below the then established Fair Trade price. Both licensees deny that any such sale took place on that day. The investigator was not accompanied by any other member of this Department nor did he make known his identity to the licensees.

I have no reason for disbelieving the story of my agent; rather, the contrary is true. An examination of the record convinces me that his testimony is much more credible than that of the licensees. The issue here, however, is not whether I should take the investigator's word against that of the licensees. It is much more fundamental and deep-rooted. The question raised by the situation at hand is whether it is compatible with sound and fair enforcement of the Fair Trade Regulations to charge a licensee with a violation thereof where the proof is based only upon the uncorroborated testimony of one investigator who did not identify himself to the licensee at the time of the alleged violation.

It has been the policy of this Department to assign at least two agents to a Fair Trade investigation, and, upon its completion,

to have the agents disclose their identities. When this is done, a licensee can have no just cause for complaint since not only are the attendant circumstances corroborated, but, by identifying themselves, the occurrence is specifically and immediately called to the licensee's attention. He may not then profess ignorance of the violation or be heard to assert that he is not in a position to answer a charge arising out of that occurrence.

It is not reasonably to be expected, however, that a licensee will recall every transaction taking place on his licensed premises in the ordinary course of business. This is peculiarly true in Fair Trade cases, where the matter of primary importance is the price at which a particular bottle of liquor was sold. Where there is no identification made by the agent, it is understandable that a licensee may not remember a sale of a particular bottle to a particular person on a particular day, or the price at which that bottle was sold. In such case the licensee is at a distinct disadvantage when, after a lapse of several weeks, he is called upon to defend himself against a charge based on such sale. Respect for the law is not fostered by the institution of proceedings under such circumstances. I shall, therefore, dismiss the first charge.

I point out, however, that this decision is restricted solely to the facts of this case. Whether the same rule shall obtain in a Fair Trade case involving any other circumstances than appear herein, or in any other type of violation, will be decided when and if a situation arises necessitating such determination.

As to (2): Licensees' guilty plea to this charge includes an admission that this violation was deliberate. The minimum penalty of fifteen days, less five days for the plea, will be imposed. Re Samuel Vogel, Inc., Bulletin 493, Item 10; Re Washington Wine & Liquor Co., Bulletin 499, Item 9.

Accordingly, it is, on this 29th day of May, 1942,

ORDERED, that Plenary Retail Distribution License D-59, heretofore issued to Abraham Weiss and Herman Hochberg by the Municipal Board of Alcoholic Beverage Control of the City of Newark for premises 236 Market Street, Newark, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 A.M. June 3, 1942 and concluding at 3:00 A.M. June 13, 1942.

Alfred E. Driscoll
Commissioner.