

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

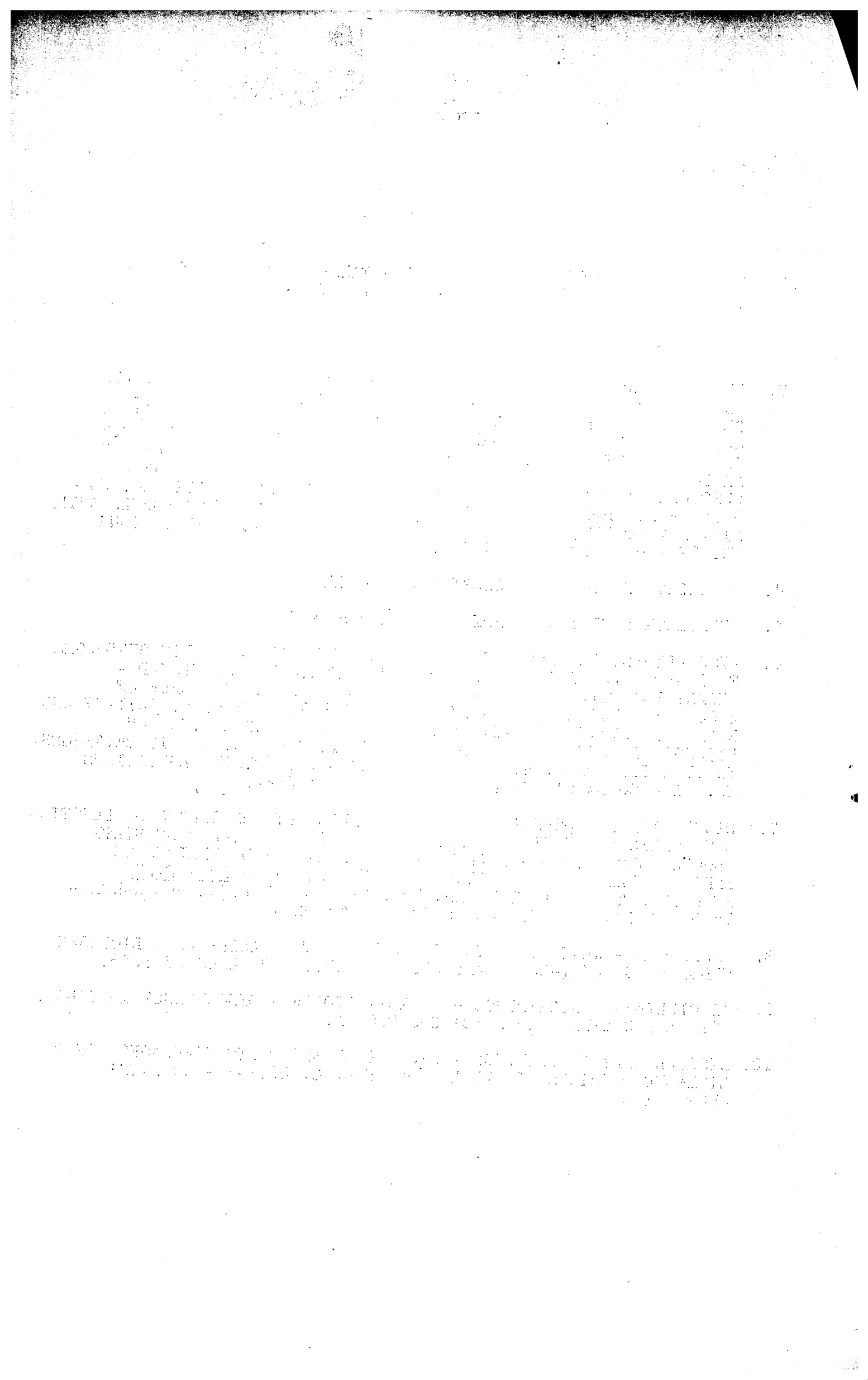
BULLETIN 620

MAY 26, 1944.

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

BULLETIN 620

MAY 26, 1944.

1. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - ILLEGAL SITUATION CORRECTED - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

G. & P. RESTAURANT, INC.)
5609 Bergenline Avenue)
West New York, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-41, issued by the Board of Commissioners of the Town of West New York.)
-----)

Samuel Moskowitz, Esq., Attorney for Defendant-Licensee.
Milton H. Cooper, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee has pleaded non vult to the following charge:

"In your application filed with the Board of Commissioners of the Town of West New York, upon which you obtained your current plenary retail consumption license, you, after listing the following as stockholders in your corporation -- Dorothy Brown, 9 shares, Samuel J. Davidson, 9 shares, Harry Pickoff, 1 share, and Louis Gordon, 1 share, falsely stated 'No' in answer to Question 24, which asks: 'Has any stockholder of the applicant corporation any beneficial interest, directly or indirectly, in the stock of any other stockholder of the applicant corporation?', whereas in truth and fact Harry Pickoff and Louis Gordon had such interest in the stock listed in the names of Dorothy Brown and Samuel J. Davidson; such false statement being in violation of R. S. 33:1-25."

In February 1940 Louis Gordon and Harry Pickoff agreed to purchase the business known as Barnet Brodie's Restaurant from one Leo Shefrin and Samuel J. Davidson, who were the owners of the stock of the corporation operating the said business. Neither Gordon nor Pickoff was then legally qualified, by reason of lack of residence, to hold ten per cent or more of the stock of the new corporation that was formed to operate the said business. Inasmuch as the full consideration was not to be paid in cash, it was agreed that eighteen shares of stock of the new corporation were to remain in the names of Davidson and his nominee, Dorothy Brown, and one share of stock each was to be issued to Gordon and Pickoff until such time as the remainder of the purchase price was paid, when the remaining shares of stock were to be transferred by Davidson and Dorothy Brown to Gordon and Pickoff. The said Dorothy Brown never had any pecuniary interest in the stock and was holding the same purely as a nominee for Davidson pending the payment of the remainder of the purchase price. Both Gordon and Pickoff owned indirectly more than ten per cent of the stock of defendant corporation and operated the business, receiving "salaries" for their "services."

This situation has been corrected and the eighteen shares of stock owned by Davidson have now been transferred to Gordon and Pickoff in amounts of nine shares each. Since March 1943, Gordon and Pickoff are qualified to own such stock. P.L. 1943, c. 46. The remaining two shares of stock have been transferred to the wives of Gordon and Pickoff.

Since there is no previous record and the "front" situation has now been corrected, I shall suspend the license for a period of ten days. Re Starr, Bulletin 590, Item 2.

Accordingly, it is, on this 19th day of May, 1944,

ORDERED, that Plenary Retail Consumption License C-41, heretofore issued by the Board of Commissioners of the Town of West New York to G. & P. Restaurant, Inc., for premises 5609 Bergenline Avenue, West New York, be and the same is hereby suspended for a period of ten (10) days, commencing at 4:00 A. M. May 28, 1944 and terminating at 3:00 A. M. June 7, 1944.

ALFRED E. DRISCOLL
Commissioner.

2. APPELLATE DECISIONS - LANCELOTTI v. WEEHAWKEN.

NICHOLAS LANCELOTTI,)
Appellant,)
-vs-)
TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF WEEHAWKEN,)
Respondent)
-----)

ON APPEAL
CONCLUSIONS AND ORDER

Nicholas S. Schloeder, Esq., Attorney for Appellant.
John N. Platoff, Esq., by George Heftler, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the action of respondent in suspending the license of the appellant for two months. The respondent, in disciplinary proceedings, found the appellant guilty of selling alcoholic beverages on two occasions during prohibited hours, in violation of a local ordinance. Appellant's premises are located at 2800 Palisade Avenue, Weehawken.

It appears from the pleadings herein that appellant pleaded guilty to charges alleging a violation of the local ordinance on the 27th of June 1943, and not guilty to similar charges with respect to sales on the 20th of June 1943.

To review the testimony would serve little useful purpose but, generally, I note that two investigators of the Department of Alcoholic Beverage Control testified that they were served several times after 2:00 A. M. on both dates. They said that, on June 20, 1943, eighteen people were being served as late as 2:35 A. M., and that on June 27, 1943 at least five people were being served at 2:45 A. M. The denial of the licensee and his bartender is not convincing. The licensee claims to remember everyone who was in his premises on June 27th after 2:00 A. M.; yet he is unable to recall anyone who was present on June 20th. I see no reason to doubt the testimony of the investigators while, on the other hand, the testimony of both the

licensee and the bartender appears to be highly colored by self-interest. The testimony in the record on appeal leaves no doubt as to the guilt of appellant on both dates and, accordingly, I must affirm respondent's finding.

Appellant contends, however, that the penalty of two months' suspension under all the circumstances is grossly excessive. Apparently he bases this contention upon the theory that, if a violation was committed on June 20, 1943, it was not called to the attention of appellant, and hence, that both violations should have been considered as a single offense in imposing a suspension. While it is true that the violation which occurred on June 27, 1943 may not be regarded as a second adjudicated violation, nevertheless respondent, in imposing a suspension, was justified in considering all of the facts of the case, including the fact that two distinct violations of the ordinance were involved.

The suspension to be imposed in local disciplinary proceedings rests within the sound discretion of the local issuing authority. Although the Commissioner on appeal has jurisdiction to reduce a suspension so imposed, that power may properly be exercised only in those cases where the suspension appears to be clearly excessive. Schmidt v. Morristown, Bulletin 457, Item 7; Creston v. Belleville, Bulletin 544, Item 2. In the present case the penalty, while very severe, does not appear to be so excessive as to require modification.

The present appeal will be dismissed, and the two-month suspension will be reinstated. Since the present licensing period will expire prior to the termination of two months, appellant's present license will be suspended for the balance of its term and I shall direct that any renewal license, or any other license issued to any other person for the premises in question for the fiscal year 1944-45, shall remain subject to this suspension until the full two months have expired.

Accordingly, it is, on this 22nd day of May, 1944,

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

ORDERED, that the two months' suspension by respondent of appellant's Plenary Retail Consumption License C-13, for premises 2800 Palisade Avenue, Weehawken, which suspension was held in abeyance pending disposition of the instant appeal, is hereby restored, to commence at 12:01 A. M. May 29, 1944, and to continue in effect until the expiration of the present license at midnight on June 30, 1944; and it is further

ORDERED, that any further license issued for the fiscal year 1944-45 for the premises in question to appellant, or any other person, shall be subject to said suspension until 12:01 A. M. July 29, 1944.

ALFRED E. DRISCOLL
Commissioner.

- 3. DISCIPLINARY PROCEEDINGS - CHARGE OF SELLING ALCOHOLIC BEVERAGES TO PERSONS ACTUALLY OR APPARENTLY INTOXICATED DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF - CHARGE OF SELLING ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R.S.33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - PERMITTING A FEMALE EMPLOYEE TO ACCEPT ALCOHOLIC BEVERAGES AT THE EXPENSE OF A CUSTOMER, IN VIOLATION OF RULE 22 OF STATE REGULATIONS NO. 20 - SALE OF ALCOHOLIC BEVERAGES TO A MEMBER OF THE ARMED FORCES AFTER MILITARY CURFEW, IN VIOLATION OF RULE 2 OF STATE REGULATIONS NO. 37 - 60 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

W. RICHARD HUBBARD)
 1576 - 6th Street)
 Ewing Township)
 P. O. Trenton, N. J.,)

CONCLUSIONS
 AND ORDERS

Holder of Plenary Retail Consumption License C-6, issued by the Township Committee of Ewing Township.)
 -----)

William A. Moore, Esq., Attorney for Defendant-Licensee.
 Milton H. Cooper, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to charges (1) and (2), alleging that he sold, served and delivered alcoholic beverages to Catherine ----, a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

Defendant pleads not guilty as to charges (3) to (9), inclusive. These charges alleged that, on various dates between November 20, 1943 and February 20, 1944, and in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20, he sold, and allowed the sale of, alcoholic beverages to, and permitted the consumption of alcoholic beverages by, Gladys ----, Margaret ----, Arlene ---- and Mrs. Evelyn ----, all of whom were minors.

Defendant also pleads not guilty as to charges (10), (11) and (12), which may be summarized as follows:

10. On February 15 and February 16, 1944 he sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to Private Ira ---- and to another soldier (name unknown) who were actually or apparently intoxicated, and allowed, permitted and suffered the consumption of alcoholic beverages by those persons, in violation of Rule 1 of State Regulations No. 20.

11. On the occasions last aforesaid, he allowed, permitted and suffered Elsie Hartnett, a female employee, to accept beverages at the expense of and as a gift from a customer, in violation of Rule 22 of State Regulations No. 20.

12. On February 16, 1944, between 12:01 A. M. and 12:35 A. M., he sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of an alcoholic beverage, directly or indirectly, to a person

wearing a uniform of the armed forces of the United States, and did allow, permit and suffer such person to consume alcoholic beverages on his licensed premises, in violation of Rule 2 of State Regulations No. 37, notwithstanding that a properly authorized officer of the armed forces of the United States had issued an operative order forbidding the sale of alcoholic beverages to any person wearing a uniform of the armed forces of the United States between the hours of 12:00 midnight and the local municipal opening hour for the following day.

As to charges (1) and (2): In mitigation, defendant states the minor, Catherine ----, verbally represented herself to be twenty-two years of age, and at a "birthday party" at the defendant's place of business she had a birthday cake at the table with the number "22" in icing thereon. This is admitted by the minor. Her actual age is twenty; and I am advised by the Hearer that she has the appearance of a girl twenty-one years or over. The mitigating circumstances will be considered in fixing the period of suspension.

Charges (3) to (9), inclusive, relate to sales to minors of various ages ranging from sixteen years to a few weeks short of twenty-one years. Gladys ----, eleven days short of being eighteen years of age, testified she was served by the wife of the licensee. Her sister-in-law corroborated the sale. The minor admits telling the wife of the proprietor that she was twenty-one years of age, but denies that she was ever requested to represent in writing that she was twenty-one years of age or over.

Margaret ----, who, at the time she was first served, was two weeks short of twenty-one years of age, testified that she was served alcoholic beverages by the wife of the licensee and by an employee on the alleged dates, and further stated she was never asked her age or requested to state her age in writing.

Arlene ----, sixteen years of age, testified that she visited the licensed premises on February 11, 1944 with Evelyn ----, and that both were served intoxicating liquors by the wife of the licensee or his employees. Nothing was said to them about their ages on the occasion of their first visit. Later she testified she returned with another companion, Muriel ----, and two soldiers, and all four were served with intoxicating beverages. She stated that after the first few visits the wife of the licensee asked her to state her age and she replied she was twenty-two years old, whereupon the wife of the licensee remarked that she didn't appear to be that old. Arlene testified that one of the waitresses, Elsie Hartnett, continued to serve her with intoxicating beverages after the wife of the licensee had made this inquiry of her.

Evelyn ---- corroborated Arlene's testimony as to the first visit. Muriel ---- corroborated Arlene's testimony as to subsequent visits and stated that she heard Mrs. Hubbard inquire about Arlene's age. Muriel further testified that after the incident related above, Arlene was served intoxicating beverages by the waitress, Elsie Hartnett.

As to charges (11) and (12): An agent of the Department of Alcoholic Beverage Control testified that, accompanied by another agent, he went to the licensed premises about 10:45 P. M. on February 15, 1944. Mrs. Hubbard was tending bar and a girl, subsequently identified as Elsie Hartnett, was waiting on the patrons in the back room. The investigator stated that shortly before midnight

Mrs. Hubbard poured approximately fifteen to seventeen glasses of whiskey and delivered them to the rear room; that practically at midnight a fuse blew out and that it was necessary for Mrs. Hubbard to secure candles and place them at various places in the premises. By that time all the soldiers had left except Ira ----, who remained seated at a table near the door. They further testified they observed Elsie Hartnett serve him with a whiskey and herself with a beer, for which Ira ---- was charged forty-five cents; that when Elsie Hartnett was not serving patrons she was sitting at the same table with Ira ---- and had several drinks with him; that at about 12:25 A. M. another service was made to Ira ---- together with one to Elsie Hartnett, and that at 12:35 A. M. the investigators identified themselves to Mrs. Hubbard and seized the remaining portion of the drink in front of Ira ---- as well as a bottle from behind the bar from which the drink had been poured. They further stated that Elsie Hartnett admitted to them having six or seven beers at the expense of the said Ira ----.

The above is a summary of the evidence presented by the Department.

With respect to the sales to the minors other than those to Catherine ----, Mrs. Hubbard, the wife of the licensee, enters a complete denial. She states, however, that on several occasions most of the minors in question were in the premises either in company with one another or with some of the persons previously referred to; that she did question some of them as to their ages and even when she was informed they were twenty-one years of age she doubted their veracity and refused to serve them alcoholic beverages. She is particularly certain as to Arlene --- and stated that when she inquired as to her age she remarked that Arlene did not appear to be twenty-one years to her and requested the girl to produce some identification the next time. She denies emphatically that Arlene was served any intoxicating beverages after this incident. The testimony of the waitress Elsie Hartnett corroborates the testimony of Mrs. Hubbard. The latter's testimony is further corroborated by a Madelyn Price, another waitress, and by one of the patrons who heard the discussion between Mrs. Hubbard and Arlene ---.

After a careful review of all the testimony involving the sales to minors, I am unable to reach any other conclusion than that the minors were served, as described in their testimony. I am unable to assume that the several minors in question, in some instances practically unknown to each other and showing no hostility whatever toward the proprietor, or his wife, could all testify to the alleged incidents in the manner that they did, were their stories not true. While I am satisfied that some of the minors were assisted in their efforts to obtain alcoholic beverages by other patrons, nevertheless I feel on all the occasions alleged they were actually served intoxicating beverages while on the licensee's premises. The wife of the licensee admits that some of these girls appeared to her to be minors and that she doubted the truth of their verbal statements that they were of full age. If the wife of the licensee had insisted upon obtaining written statements from these girls, it is quite possible that the violations would not have occurred. In any event, since no written statements were obtained, the defense which may be set up under R. S. 33:1-77 was not established. I find the licensee guilty as to charges (3) to (9), inclusive.

In reference to charges (11) and (12), as outlined above, the wife of the licensee contends that while Elsie Hartnett was an employee of the tavern she was employed only on Saturday and Sunday nights, and that the particular incident occurred on Tuesday night,

February 15th, and Wednesday morning, February 16th, when she was not on duty. She alleges that, on the particular occasion, Elsie Hartnett was off duty but had an engagement with Ira ----, the soldier in question, to meet him at the licensed premises, and that she was keeping a social engagement with him. She admits that on several occasions during the evening, when she was rushed, Elsie Hartnett assisted in serving other patrons and after she did this she always returned to the table where her friend, Ira ----, was seated and resumed her social engagement with him. She admits, however, that all the services made to the table where Ira --- and Elsie Hartnett were seated were made by Elsie Hartnett herself and the charges for the drinks collected by Elsie Hartnett. This testimony is corroborated by Elsie Hartnett, who, in effect, states that she was not employed on the evening in question but whatever she did in the line of serving patrons was simply as an accommodation for which she received no remuneration whatever. The wife of the licensee further states that no drinks were served to any soldiers after twelve o'clock and that the partially filled glass that the agents took away from Ira --- after 12:00 A. M. on the morning of February 16th was one which had been ordered prior to the curfew hour. I am unable to accept this contention. I am satisfied that the defense is simply a weak excuse to cover up what actually occurred, namely, that the waitress in question was attempting to entertain her "friend" during the hours of her employment and, as very often happens, it just didn't "work out." Therefore, I must find the licensee guilty as to charges (11) and (12).

This brings up the remaining charge (10) of serving intoxicating beverages to a person or persons apparently or actually intoxicated. A careful reading of all the testimony convinces me that the Department has failed to establish the guilt of the licensee by a preponderance of the evidence. I shall dismiss charge (10).

As to penalty: With respect to penalty to be imposed for the various violations referred to, the licensee has pleaded guilty to the first two charges. His explanation is quite plausible. I will impose a penalty of ten days, less five days' reduction for the guilty plea. As to the charges involving sales to Margaret ---, Evelyn --- and Gladys ---, the ages of these three minors are twenty, twenty and eighteen, respectively. In the latter two cases, inquiry was made as to the ages of the said minors and the licensee's wife was advised in each case that they were over twenty-one years of age. The other minor, Arlene ---, was sixteen years of age. This is an aggravating circumstance. It appears also that alcoholic beverages were sold to these minors on numerous occasions. Under all the circumstances, I shall impose an additional penalty of thirty days because of the finding of guilt as to charges (3) to (9), inclusive. The license will be suspended for a further period of ten days because of the violation set forth in charge (11) and for an additional period of fifteen days because of the violation set forth in charge (12). Hence, the total penalty will consist of a suspension of the license for a period of sixty days.

The present license will expire by its terms before the expiration of the suspension herein imposed.

Accordingly, it is, on this 22nd day of May, 1944,

ORDERED, that Plenary Retail Consumption License C-6, issued by the Township Committee of Ewing Township to W. Richard Hubbard for premises 1576 Sixth Street, Ewing Township, be and the same is hereby suspended for the balance of its present term, effective at 2:30 A. M. May 29, 1944; and it is further

ORDERED, that if any license be issued to this licensee or to any other person for the premises in question for the fiscal year 1944-45, such license shall remain under suspension until 2:30 A. M. July 28, 1944.

ALFRED E. DRISCOLL
Commissioner.

4. APPELLATE DECISIONS - BAZZINI v. HOBOKEN.

THEODORE C. BAZZINI, trading as)
TEDDY'S BAR,)

Appellant,)

-vs-)

BOARD OF COMMISSIONERS OF THE)
CITY OF HOBOKEN,)

Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

Dominick J. Marrone, Esq., Attorney for Appellant.

John J. Fallon, Esq., by Robert F. McAlevy, Jr., Esq.,

Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from an order of respondent revoking the plenary retail consumption license of the appellant. Appellant's license was revoked after he had been found guilty of selling alcoholic beverages, in violation of Rule 1 of State Regulations No. 20, to three minors, two of whom were seventeen years of age and one of whom was eighteen years of age.

Each of the minors named in the charge testified that he went to the premises of the licensee on the evening in question and was served with beer by the licensee himself. The licensee admitted serving the minors but states that he made no inquiry as to their ages because their general appearance and manner of dress satisfied him that they were of age. This explanation, of course, does not constitute an adequate defense to the charge. The purpose of the law prohibiting the sale of alcoholic beverages to minors (R. S. 33:1-77), as well as Rule 1 of State Regulations No. 20, is to protect the youth of this State. Accordingly, licensees, where they are called upon to sell or serve persons who may be in that age group where it is possible that they may be minors, should carefully follow the procedure outlined in R. S. 33:1-77. Experience indicates that, where this procedure is followed, the minor and the licensee alike obtain maximum protection.

The appellant has no record of previous adjudicated violations. Under the circumstances, I am of the opinion that the penalty inflicted in this case is excessive, especially so in view of the moderate suspension imposed by the respondent in other cases of similar nature. I hesitate to moderate any penalty inflicted by any issuing authority and will do so only in those cases where it clearly appears that the suspension imposed is excessive. Allowing reasonable latitude for differences of opinion as to the proper suspension, thirty days would appear to be a sufficient suspension.

Accordingly, it is, on this 22nd day of May, 1944,

ORDERED, that the penalty of revocation of Plenary Retail Consumption License C-18, heretofore issued to Theodore C. Bazzini, trading as Teddy's Bar, for premises 203 Washington Street, Hoboken, be and the same is hereby modified to a suspension for a period of thirty (30) days, effective at 2:00 A. M. May 29, 1944, and terminating at 2:00 A. M. June 28, 1944; and it is further

ORDERED, that the order heretofore entered staying respondent's order shall continue in effect until the suspension imposed herein shall become effective.

ALFRED E. DRISCOLL
Commissioner.

5. APPELLATE DECISIONS - SPINHOVEN v. HOBOKEN.

JOHANNA SPINHOVEN, trading as)
THE DUTCH MILL INN,)
)
Appellant,)
)
-vs-)
)
BOARD OF COMMISSIONERS OF THE)
CITY OF HOBOKEN,)
)
Respondent)

ON APPEAL
CONCLUSIONS AND ORDERS

Anthony P. LaPorta, Esq., Attorney for Appellant.
John J. Fallon, Esq., by Robert F. McAlevy, Jr., Esq.,
Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from an order of respondent revoking the plenary retail consumption license of the appellant. Respondent revoked the license after it had found the appellant guilty of selling alcoholic beverages, in violation of Rule 1 of State Regulations No. 20, to two minors who were eighteen and twenty years of age.

From the testimony it appears that on the evening in question the two minors mentioned in the charge, accompanied by at least three other companions, visited the licensed premises and were served with a round of beer by the appellant's bartender. Some discrepancies appear in the testimony as to whether there were five or seven persons in the party. The latter is important only in so far as it may relate to the question of whether or not any inquiry was made by the bartender as to age prior to serving the minors. The two minors testified that the beer was served without any inquiry being made by the bartender as to their age. Two companions of the minors, both of whom were over twenty-one years of age, offered similar testimony. The minors further testified that, when a member of the detective force of Hoboken entered the premises, the bartender then asked their ages and, upon being informed that they were under twenty-one, took the beers away, but that, after the detective left the premises, he returned the beers to the minors. This story is denied by the bartender.

The bartender testified that he inquired as to the respective ages of everyone in the party, that one of the group said he was

nineteen years of age, that the two minors named in the charges asserted that they were twenty-one, and that he thereupon served the two minors and their two older companions with beer but did not serve the other member of the party who had admitted that he was nineteen years of age.

Whether this is the fact is beside the point for, as I have pointed out in previous decisions, a casual inquiry as to age is not sufficient. The licensee and her agents, to establish a defense to the charge of selling alcoholic beverages to minors, must prove compliance with all of the provisions of R. S. 33:1-77. Re Wooby, Bulletin 606, Item 6. Had the bartender in this case requested the minors to represent in writing that they were twenty-one years of age, the violation of the law undoubtedly would not have occurred.

The licensee testified that the premises on the evening in question were in charge of her bartender as she was ill at that time. She further testified that she had given strict instructions regarding the sale to minors. In disciplinary proceedings, a licensee is responsible for the acts of her employees. Re Kneller, Bulletin 49, Item 4. The action of the respondent in finding the licensee guilty is affirmed.

The only point remaining is the question of the penalty which appellant argues is excessive. The licensee has no prior record of adjudicated violations. Moreover, I note that in two recent cases conducted by the respondent involving charges of sales to minors, comparatively short suspensions were imposed by the respondent. The testimony of the minors that they were permitted to consume the beer after the detective left the premises, if believed, warrants an increase in the normal suspension. Since this is a first offense, it appears that the penalty inflicted is excessive, especially in view of the moderate penalties imposed by respondent in other similar cases. Taking all of the facts into consideration, and giving reasonable latitude for differences of opinion, I have reached the conclusion that the penalty of revocation should be reduced to a suspension for thirty days.

Accordingly, it is, on this 22nd day of May, 1944,

ORDERED, that the penalty of revocation of Plenary Retail Consumption License No. C-149, heretofore issued to Johanna Spinhoven, trading as The Dutch Mill Inn, for premises 41 Third Street, Hoboken, be and the same is hereby modified to a suspension of said license for a period of thirty (30) days, effective at 2:00 A. M. May 29, 1944, and terminating at 2:00 A. M. June 28, 1944; and it is further

ORDERED, that the order heretofore entered staying respondent's order shall continue in effect until the suspension imposed herein shall become effective.

ALFRED E. DRISCOLL
Commissioner.

- 6. DISCIPLINARY PROCEEDINGS - CHARGE OF SELLING ALCOHOLIC BEVERAGES TO PERSONS ACTUALLY AND APPARENTLY INTOXICATED DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF - SALE OF ALCOHOLIC BEVERAGES TO A MINOR, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - EMPLOYING A MINOR ON LICENSED PREMISES AND PERMITTING HIM TO SERVE ALCOHOLIC BEVERAGES, IN VIOLATION OF R. S. 33:1-26 AND RULE 1 OF STATE REGULATIONS NO. 11 - 20 DAYS' SUSPENSION, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

HENRY O'DONNELL)
 T/a HARRY'S TAVERN)
 42 Smith Street)
 Perth Amboy, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-106 issued by the Board of Commissioners of the City of Perth Amboy.)
 -----)

Morris M. Schnitzer, Esq., Attorney for Defendant-Licensee.
 Milton H. Cooper, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult to charges alleging that, on March 4, 1944, he sold alcoholic beverages to, and permitted the consumption of alcoholic beverages on his licensed premises by, Vera ---, a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The licensee also pleaded non vult to a charge alleging that on the same date he knowingly employed Private ---, a minor, to work on his licensed premises, and permitted him to serve alcoholic beverages, in violation of R. S. 33:1-26 and Rule 1 of State Regulations No. 11.

Defendant pleaded not guilty to the following charge:

"4. On the occasion aforesaid, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to U. S. Coast Guardsmen Edward --- and William ---, persons actually and apparently intoxicated, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons on the licensed premises, in violation of Rule 1 of State Regulations No. 20."

The file herein discloses that, on the evening of March 4, 1944, defendant hired Private ---, twenty years of age, to act as a waiter and to serve patrons in the rear room. During the course of the evening this employee served six glasses of beer at a table in the rear room to a party of six, including Mrs. Vera ---, eighteen years of age. In mitigation, defendant alleges that his regular waiter failed to appear on the evening in question and that he requested the minor soldier, who was in his premises, to act as a waiter during the evening.

The evidence given at the hearing herein discloses that both Coast Guardsmen were apparently intoxicated at about 11:00 P. M. on March 4, 1944, when they went from the barroom to the rear room and created a disturbance which was quelled by the local police. Early in

the evening the Coast Guardsmen had had a number of drinks in the barroom. Officer Belko, a member of the Perth Amboy Police Department, saw them in the barroom at about 10:15 P.M. and testified that, in his opinion, they were not intoxicated at that time. The evidence shows that thereafter they were served with three drinks by Joseph Wenzel, the bartender, but there is no evidence that they were intoxicated when any of these drinks were served. It is apparent that no drinks were served to either of the Coast Guardsmen after they created the disturbance in the rear room. After considering all the evidence, I conclude that the Department has not sustained the burden of proof as to charge (4) and hence I must dismiss said charge.

As to penalty: Defendant has no prior adjudicated record. I shall suspend his license for a period of ten days for permitting the sale of alcoholic beverages to the eighteen year old minor. The fact that the minor who was unlawfully employed and who made the unlawful sale was a member of the armed forces is an aggravating circumstance in this case. I shall suspend the license for an additional period of ten days on this charge.

From the total penalty of twenty days, five days will be remitted for the plea, leaving a net suspension of fifteen days.

Accordingly, it is, on this 23rd day of May, 1944,

ORDERED, that Plenary Retail Consumption License C-106, issued by the Board of Commissioners of the City of Perth Amboy to Henry O'Donnell, t/a Harry's Tavern, for premises 42 Smith Street, Perth Amboy, be and the same is hereby suspended for fifteen days, commencing at 2:00 A. M. May 29, 1944, and terminating at 2:00 A. M. June 13, 1944.

ALFRED E. DRISCOLL
Commissioner.

- 7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES ON ELECTION DAY DURING PROHIBITED HOURS, IN VIOLATION OF RULE 2 OF STATE REGULATIONS NO. 20 - FAILURE TO CLOSE LICENSED PREMISES ON ELECTION DAY AND PERMITTING PERSONS OTHER THAN BONA FIDE EMPLOYEES TO REMAIN THEREIN, IN VIOLATION OF LOCAL ORDINANCE - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

BARBARA MITCHELL)
10 Church Street)
Lambertville, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-7, issued by the Board of Commissioners of the City of Lambertville.)
- - - - -)

Lloyd Fisher, Esq., Attorney for Defendant-Licensee.
Edward F. Hodges, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee pleads guilty to charges alleging that (1) and (2) she sold alcoholic beverages on an Election Day, Tuesday, May 9, 1944, in violation of Rule 2 of State Regulations No. 20 and of a local ordinance, respectively; and (3) she failed to close her licensed premises on said day and permitted persons other than herself and her bona fide employees to remain therein, in violation of a local ordinance.

In view of the fact that licensee has no previous adjudicated record, the license will be suspended for a period of fifteen days. Cf. Re Morgan, Bulletin 542, Item 10. Five days will be remitted because of the guilty plea entered herein, making a net suspension of ten days.

Accordingly, it is, on this 23rd day of May, 1944,

ORDERED, that Plenary Retail Consumption License C-7, issued by the Board of Commissioners of the City of Lambertville to Barbara Mitchell for premises 10 Church Street, Lambertville, be and the same is hereby suspended for ten (10) days, commencing at 2:00 A. M. May 31, 1944, and terminating at 2:00 A. M. June 10, 1944.

ALFRED E. DRISCOLL
Commissioner.

8. RESIDENCE - WHAT CONSTITUTES RESIDENCE TO QUALIFY AS A LICENSEE UNDER R. S. 33:1-25 AS AMENDED BY CHAPTER 46, LAWS OF 1943.

May 23, 1944

Mrs. Thomas C. Paul

Dear Mrs. Paul:

I have your letter, dated May 19th, asking how long a person must be a resident of New Jersey in order to get a liquor license.

You inform me that your mother, a widow sixty-two years of age, has held a plenary retail consumption license in New Jersey since Repeal and owns the property whereon the licensed premises are located; that your mother wishes to retire and, having for some time tried unsuccessfully to sell the property, she has offered to rent the place to you and your husband. Your letter ends as follows: "...of course we live in Phila. but as I am her daughter isn't there a permit that I could get in order to take the Liquor License?"

First I must explain certain important matters concerning retail licenses under the State Alcoholic Beverage Law. Except in cases not here material, retail alcoholic beverage licenses are issued not by the State Commissioner but by the various municipal issuing authorities of the municipalities where the licensed premises are located. (New Jersey Revised Statutes, 33:1-19 and 33:1-24.) A liquor license is a personal privilege which no one but the licensee - the real party in interest - may exercise. Anyone other than the licensee who exercises the license privileges is guilty of a misdemeanor, and there is no exception in favor of a licensee's daughter or other member of the licensee's family. In the circumstances stated in your letter, it is not possible under the Alcoholic Beverage Law for you to get a permit to take your mother's liquor license. The law does, however, authorize the various municipal issuing authorities to grant the transfer of a license from one person to another upon the filing of a proper application by the person seeking the transfer and the payment of the transfer fee, which is ten per centum of the annual license fee for the license

sought to be transferred. But a person, to be eligible to receive a license transfer, must qualify in all respects as a licensee under the requirements of the Alcoholic Beverage Law (Revised Statutes 33:1-26). This brings us to your question concerning New Jersey "residence."

Section 33:1-25 of the Revised Statutes (as amended by P. L. 1943, c. 46) reads in part:

"No retail license shall be issued to a natural person unless he is a.....resident of the State of New Jersey at the time of the submission of the applicationCessation of.....New Jersey residence shall be cause for suspension or revocation of the license." (Formerly the law required residence in New Jersey for at least five years continuously immediately prior to the submission of the license application.)

The words "resident" and "residence", as used in the present law, contemplate physical presence in addition to domicile. "Domicil" means the place where a person maintains his permanent home to which, when he is absent, he has the intention of returning. In determining whether or not the "physical presence" requirement is satisfied, mere temporary absence may be disregarded, but long absence from the State may fatally interrupt the continuity of residence even though the person at all times intended to return to this State. In other words, a person's lengthy absence from New Jersey may make him a non-resident within the statute's meaning even though his domicile remains in this State. See Re Gellert, Bulletin 618, Item 1.

The question of whether or not the statutory residence requirement is satisfied should be decided in each case in light of the full facts and circumstances there presented. Your letter, which states plainly that you are not now a resident of New Jersey, does not indicate your intention to establish a bona fide residence in this State. On the basis of the limited information before me, I cannot find that you will qualify as a "resident" under our law. If you change your intention regarding residence, and your place of abode; or if there are pertinent facts relating to residence which were not stated in your letter, please advise me at once and I shall reconsider the matter.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

9. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN COLOR, ACID AND SOLIDS - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

DOUGLAS SHERATON CORP.)
11-21 Hill Street)
Newark, 1, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-338, issued by the)
Municipal Board of Alcoholic Beverage Control of the City of)
Newark.)
- - - - -)

Leonard H. Cohn, Esq., Attorney for Defendant-Licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that, on April 13, 1944, it possessed two 4/5 quart bottles labeled "Four Roses Fine American Whiskey, A Blend of Straight Whiskies 90 Proof", the contents of which were not genuine as labeled, in violation of R. S. 33:1-50.

Analysis of the liquor found in both bottles discloses a variation from an original sample in acid and solid content, and also in coloring matter.

In mitigation, the defendant states that the offense may have resulted from the act of a disgruntled employee. This does not serve to excuse the violation since the defendant, despite the lack of any personal participation by any of its responsible officers in the violation, must be held to strict accountability for any "refills" found in its stock of liquor. Cf. Re Kurian, Bulletin 517, Item 2.

Since the defendant's record is otherwise clear of any prior disciplinary proceedings, and since no aggravating circumstances appear to have attended the instant violation, the usual penalty of ten days will be imposed. Re Dressler, Bulletin 619, Item 6.

Accordingly, it is, on this 23rd day of May, 1944,

ORDERED, that Plenary Retail Consumption License C-338, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Douglas Sheraton Corp. for premises 11-21 Hill Street, Newark, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A. M. May 24, 1944, and terminating at 2:00 A. M. June 3, 1944.

ALFRED E. DRISCOLL
Commissioner.

10. DISCIPLINARY PROCEEDINGS - STORAGE OF ALCOHOLIC BEVERAGES OFF THE LICENSED PREMISES, IN VIOLATION OF R. S. 33:1-2 - 30 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

TERESA M. PATRICK)
T/a "PATRICKS GROVE")
Riva Avenue, Brookview)
East Brunswick Township)
P. O. RFD 1, New Brunswick, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-11, issued by the Township Committee of the Township of East Brunswick.)
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Samuel D. Hoffman, Esq., Attorney for Licensee.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee has entered a plea of guilty to a charge of violating R. S. 33:1-2 by storing alcoholic beverages off her licensed premises. These alcoholic beverages were a part of the supply owned by the licensee and intended for use by her in the operation of her business. The improper storage was discovered by agents of the Department of Alcoholic Beverage Control on December 22, 1943, while they were engaged in the investigation of an illicit still located on premises owned by the licensee and her husband, Manning Patrick.

The licensee has held a license in East Brunswick Township continuously since July 1, 1939. Accordingly, she must have known that the law required her to store the alcoholic beverages belonging to her licensed business upon licensed premises. Sound enforcement required full compliance with this provision of our law.

Taking into consideration all of the circumstances surrounding the violation and the background against which this violation must be projected, I will suspend the license for a period of thirty days. In view of the plea and suspension herein and the criminal proceedings presently pending against the licensee and her husband, the remaining charges against the licensee will be nolle prossed.

Accordingly, it is, on this 23rd day of May, 1944,

ORDERED, that Plenary Retail Consumption License C-11, heretofore issued to Teresa M. Patrick, t/a "Patrick's Grove", for premises on Riva Avenue, Brookview, East Brunswick Township, P. O. RFD 1, New Brunswick, by the Township Committee of the Township of East Brunswick, be and the same is hereby suspended for a period of thirty (30) days, commencing at 2:00 A. M. on May 29, 1944, and terminating at 2:00 A.M. on June 28, 1944.

Alfred E. Griswold
Commissioner.