

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

BULLETIN 618

MAY 11, 1944.

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DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
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1. DISCIPLINARY PROCEEDINGS - CHARGE OF FALSE ANSWER IN LICENSE APPLICATION DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF - CHARGE OF EMPLOYING A DISQUALIFIED PERSON DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

HEREIN OF THE CONSTRUCTION OF THE WORDS "RESIDENT" AND "RESIDENCE".

In the Matter of Disciplinary Proceedings against )

MARY GELLERT, )  
t/a WINDMILL INN, )  
6th and Elm Avenues, )  
Lindenwold Borough, )  
P.O. Laurel Springs, RFD, N.J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-5 for fiscal year 1941-42, )  
and now holder of Plenary Retail Consumption License C-5 for fiscal year 1943-44, both issued by the Borough Council of the Borough of Lindenwold. )

Mary Gellert, Pro Se.  
Richard E. Silberman, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleaded not guilty to the following charges:

"1. In your license application dated June 10, 1941 filed with the Borough Council of the Borough of Lindenwold, upon which Plenary Retail Consumption License C-5 for the year 1941-42 was granted, 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 Philadelphia, Pennsylvania until March 1937; said false statement being in violation of R.S. 33:1-25.

"2. On or about February 9, 1942 and on divers days prior thereto, you knowingly employed and had connected with you in a business capacity a person who would fail to qualify as a licensee in that you employed on your licensed premises Edward M. Hechter, a resident of Philadelphia, Pennsylvania until March 1937, a person who would fail to qualify as a licensee, in violation of Rule 1 of State Regulations No. 11."

No question is raised herein as to the defendant's right to hold a license for the present fiscal year. In 1943, effective March 27, the Alcoholic Beverage Law was amended (P.L. 1943, c. 46) and the requirement that an applicant for a plenary retail consumption license "shall have been a resident of the State of New Jersey

for at least five years continuously immediately prior to the submission of the application" was deleted. In lieu thereof, an applicant is now required to be "a resident of the State of New Jersey at the time of the submission of the application." R.S. 33:1-25. The Alcoholic Beverage Law continues to require that an applicant for a license be a citizen of the United States. Cessation of United States citizenship or "New Jersey residence" is cause for the suspension or revocation of the license.

The sole issue raised by charge (1), therefore, is whether or not the defendant in her application filed June 10, 1941, falsely stated that she had resided in New Jersey during the five years immediately preceding her application.

From 1923 to 1931 defendant and her husband were residents of and domiciled in the State of New Jersey. In 1931 defendant's husband, because of illness, was ordered to go to a veterans' hospital in California. He died in the hospital in November 1940. In order to support herself and her two children, defendant, between 1931 and 1937, accepted employment outside of this State. For a time prior to March 1937 she lived at her mother's home in Philadelphia, Pennsylvania. In March 1937 defendant established her home in the Borough of Lindenwold, New Jersey. Apparently she has continued to reside there since that time. She testified at the hearing that, during her absence from New Jersey, both she and her husband intended at all times to return to New Jersey if and when he recovered. There is no evidence before me that defendant at any time acquired a domicile away from New Jersey.

"Residence" and "citizenship" are not synonymous. Pennsylvania Co. v. Bender, 148 U.S. 255, 37 L. Ed. 441. While the words "residence" and "domicile" have occasionally been construed as being synonymous, this is not always true. In Stout v. Leonard (E. & A.) 37 N.J.L. 492, 495, Chancellor Runyon stated:

"Residence is not domicil, though domicil is the legal conception of residence. Domicil is residence combined with intention."

Where "residence" has been construed as being synonymous with domicile, there is a well recognized presumption that, when a person takes up his residence "animo manendi", his residence continues at that place despite temporary absence. Cadwalader v. Howell, 18 N.J.L. 138; Harrell v. Harrell, 39 N.J. Eq. 279; Valentine v. Valentine, 61 N.J. Eq. 400. See also Looloian v. Greenwich, Bulletin 504, Item 6; Re Case No. 328, Bulletin 410, Item 11.

Prior to the 1943 amendment and over a period of many years, the words "resident" and "residence" were construed by the Commissioner in a number of cases as though they were synonymous with the word "domicile". Lilly v. Way, Bulletin 220, Item 1; Looloian v. Greenwich, supra. In view of these decisions by the Commissioner interpreting the words "resided in New Jersey" as meaning "domiciled in New Jersey", I have reached the conclusion that the licensee, despite her absence from the State during the period of her husband's illness, was entitled to rely upon the same and, therefore, justified in answering "Yes" to the questions cited in charge (1). Accordingly, I shall find the defendant not guilty as to charge (1).

The enactment of P.L. 1943, c. 46, requires a re-examination of the previous decisions construing the words "resident" and "residence" as they now appear in the Alcoholic Beverage Law.

The words "resident" and "residence" as presently used in the Alcoholic Beverage Law contemplate physical presence in addition to domicile. Cf. Re Conover, Bulletin 16, Item 4. While temporary absence may be disregarded, protracted absence from the State may interrupt the continuity of residence even though the person at all times intended to return to this State. Accordingly, if a resident leaves New Jersey for a temporary purpose and with an intention of returning, and later does return, the question of whether the continuous character of the residence has been broken should be determined in each case upon the particular facts there present. Re Cook, 239 Fed. 782; Stadtmuller v. Miller, 11 Fed. 2nd, 732. The authority of Re Conover, supra, is re-established.

As to charge (2): Edward M. Hechter was employed by defendant at the time the charges were preferred. Hechter purchased the premises wherein the licensed business is conducted in April 1936. The licensee testified at the hearing that Hechter had lived at said premises continuously since November 1936. The Department has failed to establish that Hechter was not a resident of this State on February 9, 1937, and hence it has not established that on said date he failed to qualify as a licensee. I shall dismiss the second charge.

Defendant was also ordered to show cause why the license issued for the fiscal year 1941-42 should not be declared null and void because it was improvidently issued. For the reasons aforesaid, the order to show cause will also be dismissed.

Accordingly, it is, on this 29th day of April, 1944,

ORDERED that the charges herein, and the order to show cause, be and the same are hereby dismissed.

ALFRED E. DRISCOLL  
Commissioner

2. DISCIPLINARY PROCEEDINGS - CHARGE OF FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACTS DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against

HARBOR LIGHT TAVERN, INC., 9 Smith Street, Perth Amboy, New Jersey,

Holder of Plenary Retail Consumption License C-107 for fiscal year 1941-42 and now holder of Plenary Retail Consumption License C-107 for fiscal year 1943-44, both issued by the Board of Commissioners of the City of Perth Amboy.

In the Matter of Disciplinary Proceedings against

ELIZABETH ROCK, 7-9 Smith Street, Perth Amboy, New Jersey,

Holder of Employment Permit No. 7397 for fiscal year 1941-42 issued by the State Commissioner of Alcoholic Beverage Control.

In the Matter of Disciplinary Proceedings against

JOHN KARDOS ROCK, 7-9 Smith Street, Perth Amboy, New Jersey,

Holder of Employment Permit No. 7398 for fiscal year 1941-42 issued by the State Commissioner of Alcoholic Beverage Control.

CONCLUSIONS AND ORDER

Leo S. Lowenkopf, Esq., Attorney for Defendant-licensee and Defendant-permittees. Abraham Merin, Esq., Appearing for State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The charges preferred herein were based upon the allegation that in April 1942 Elizabeth Rock and John Kardos Rock had resided in New Jersey for less than five years and that, despite their inability at that time to qualify as individual licensees, they each owned more than ten per cent. of the stock of Harbor Light Tavern, Inc.

It is admitted that in April 1942 the total capital stock of said corporation consisted of 150 shares, of which Elizabeth Rock owned 50 shares and John Kardos Rock owned 24 shares.

The evidence shows that both Elizabeth Rock and John Kardos Rock were residents of and domiciled in New Jersey from the time of their marriage in 1926 until 1933; that thereafter, for business reasons, they were absent from this State until December 1940. During their absence from New Jersey they never established their own home elsewhere, but lived with families by whom they were from time to time employed. They testified that during their absence they intended at all times to return to New Jersey. For the reasons set forth in Re Gellert, decided herewith, I conclude that in April 1942 they qualified as individual licensees so far as the then existing residence requirements of the statute are concerned. From the evidence presented, Harbor Light Tavern, Inc. appears to be a bona fide corporation. Under the circumstances, I shall dismiss all charges preferred herein and discharge the order to show cause why the license issued to the corporation should not be cancelled as improvidently issued.

Accordingly, it is, on this 29th day of April, 1944,

ORDERED that all charges herein be and the same are hereby dismissed and that the order to show cause be and the same is hereby discharged.

ALFRED E. DRISCOLL  
Commissioner.

3. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN PROOF, SOLIDS AND ACIDS - 15 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against  
FRANK PAULA,  
140 Tonnele Avenue,  
Jersey City 6, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-32, issued by the Board of Commissioners of the City of Jersey City.

Messano and Messano, Esqs., Attorneys for Defendant-licensee.  
Gaylord R. Hawkins, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant, Frank Paula, has pleaded non vult to a charge of possessing illicit liquor, in violation of R.S. 33:1-50.

On March 7, 1944, a Federal agent, on testing the liquor at the defendant's tavern, seized five bottles of alcoholic beverages which, upon analysis, proved to be low in proof and high in solids and acid content.

The defendant, in mitigation, states that he acquired the licensed premises in October 1943 and because of his other activities, he has not been able to devote very much time to the operation of the business and relied entirely upon his employees. He further states that after the complaint was filed against him, he made a complete check-up of the situation, and that the bartender admitted to him that he was taking a lower priced whiskey and putting it in partly filled bottles of higher priced whiskey, for which he charged the

regular price and pocketed the difference. The employee has since been discharged.

While this may be the fact, nevertheless, the licensee must realize that the mere possession by him of illicit beverages is a violation of the act. Re Moritko, Bulletin 490, Item 4. While the actual blame may not be his, nevertheless, licensees are held strictly accountable for their liquor stock. Re Twelve East Park Street Tavern, Inc., Bulletin 481, Item 9. Customers are entitled to receive exactly what they order and, if there is any tampering, a licensee as "master of his house" will be held to a strict accountability even though personally innocent of the tampering.

The licensee has no record whatever of prior offenses. The fact that five bottles were found to contain illicit liquor is an aggravating circumstance. The license will be suspended for fifteen days. It is suggested that the licensee exercise better care and judgment next time in selecting employees.

Accordingly, it is, on this 1st day of May, 1944,

ORDERED that Plenary Retail Consumption License C-32, issued by the Board of Commissioners of the City of Jersey City, to Frank Paula, for premises 140 Tonnele Avenue, Jersey City, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 A. M. May 8, 1944 and terminating at 2:00 A. M. May 23, 1944.

ALFRED E. DRISCOLL  
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS BY HOLDER OF EMPLOYMENT PERMIT, IN VIOLATION OF R. S. 33:1-77 - EMPLOYMENT PERMIT SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against  
JOHN LAI,  
174 South Main Street,  
Hackensack, N. J.  
Holder of Employment Permit No. 6345,  
issued by the State Commissioner of  
Alcoholic Beverage Control.

CONCLUSIONS  
AND ORDER

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Filomeno Sansone, Esq., Attorney for Defendant-Permittee.  
Milton H. Cooper, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-permittee pleaded guilty to the charge of having, on February 26, 1944, sold alcoholic beverages to three minors, in violation of R. S. 33:1-77.

The defendant, at the time of the sale, was in the employ of Matteo Mele, t/a Roseland Casino. He is an Italian national and the holder of an employment permit issued by this Department. Two of the minors in question were eighteen years of age and the third was seventeen years of age. Disciplinary proceedings were also instituted against the licensee and, on March 9, 1944, the license of the latter was suspended for ten days, effective March 14, 1944. Re Mele, Bulletin 609, Item 13.

The employee should bear his share of the guilt. I shall, therefore, impose the same penalty against the defendant-permittee as was imposed against his employer. His employment permit will be suspended for a period of fifteen days, with five days remission for the guilty plea, or a net suspension of ten days.

Accordingly, it is, on this 2nd day of May, 1944,

ORDERED that Employment Permit No. 6345, issued to John Lai by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for ten (10) days, commencing at 8:00 A. M. May 8, 1944 and terminating at 8:00 A. M. May 18, 1944.

ALFRED E. DRISCOLL  
Commissioner.

5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO WOMEN OVER THE BAR, IN VIOLATION OF LOCAL ORDINANCE - 5 DAYS' SUSPENSION, LESS 2 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

FRANK ROBINSON & JOSEPH R. WALLEY,  
t/a Paradise Cafe,  
702 South Second Street,  
Camden, New Jersey.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-165, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

Frank Robinson and Joseph R. Walley, Pro ses.  
Edward F. Hodges, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendants pleaded guilty to a charge alleging that, on March 16, 1944, they served alcoholic beverages to women directly over their bar, in violation of local ordinance.

The license will be suspended for the usual five-day period for this type of violation, with two days remitted because of the guilty plea, leaving a net suspension of three days. Cf: Re Polato, Bulletin 582, Item 11.

Accordingly, it is, on this 3rd day of May, 1944,

ORDERED that Plenary Retail Consumption License C-165, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Frank Robinson & Joseph R. Walley, t/a Paradise Cafe, for premises 702 South Second Street, Camden, be and the same is hereby suspended for three (3) days, commencing at 2:00 A. M. May 9, 1944 and terminating at 2:00 A. M. May 12, 1944.

ALFRED E. DRISCOLL  
Commissioner.

6. ACTIVITY REPORT FOR APRIL, 1944

To: Alfred E. Driscoll, Commissioner

<u>ARRESTS:</u>	Licensees and employees - - - - -	3	Bootleggers - - - - -	8
	Total number of persons arrested - - - - -			11
<u>SEIZURES:</u>	Stills - 1 to 50 gallons daily capacity - - - - -			2
	50 gallons and more daily capacity - - - - -			1
	Total number of stills seized - - - - -			3
	Mash - gallons - - - - -			25,000
	Motor Vehicles - Trucks - - - - -			0
	Passenger cars - - - - -			4
	Total number of motor vehicles seized - - - - -			4
	Beverage alcohol - gallons - - - - -			265
	Brewed malt alcoholic beverages (beer, ale, etc.) - gallons - - -			6
	Wine - gallons - - - - -			0
	Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons -			0
<u>RETAIL LICENSEES:</u>				
	Total number of premises inspected - - - - -			1,451
	Total number of bottles gauged - - - - -			10,103
	Total number of premises where violations were found - - - - -			74
	Total number of violations found - - - - -			203
	Type of violations found:			
	Illicit (bootleg) liquor - - - - -	122	Improper beer tap markers - - - - -	3
	Gambling devices - - - - -	1	Stock disposal permits necessary - - -	2
	Prohibited signs - - - - -	0	No sign denoting legal sale - - -	
	Unqualified employees - - - - -	38	hours - off-premises con - - -	
	"Fronts" (concealed ownership) - - - - -	0	sumption - - - - -	32
			Other types of violations - - - - -	5
<u>MILITARY AREA PATROL INSPECTIONS:</u>				539
<u>STATE LICENSEES:</u>				
	Premises inspected - - - - -			7
	License applications investigated - - - - -			15
<u>COMPLAINTS:</u>				
	Investigated, reviewed and closed - - - - -			350
	Investigation assigned, not yet completed - - - - -			276
<u>LABORATORY:</u>				
	Analyses made - - - - -			160
	"Shake-up" cases (alcohol, water and artificial coloring) - - -			10
	Liquor found to be not genuine as labeled - - - - -			63
<u>IDENTIFICATION BUREAU:</u>				
	Criminal fingerprint identifications made - - - - -			14
	Persons fingerprinted for non-criminal purposes - - - - -			162
	Identification contacts with other enforcement agencies - - - - -			173
	Motor vehicle identifications via N. J. State Police Teletype - - -			21
<u>DISCIPLINARY PROCEEDINGS:</u>				
	Cases transmitted to municipalities - - - - -			16
	Cases instituted at Department - - - - -			18
<u>HEARINGS HELD AT DEPARTMENT:</u>				
	Total number of hearings held - - - - -			45
	Appeals - - - - -	2	Eligibility - - - - -	7
	Disciplinary proceedings - - - - -	32	Seizures - - - - -	4
<u>PERMITS ISSUED:</u>				
	Total number of permits issued - - - - -			452
	Unqualified employees - - - - -			140
	Solicitors - - - - -			21
	Social affairs - - - - -			135
	Home manufacture of wine - - - - -			1
	Disposal of alcoholic beverages - - - - -			65
	Miscellaneous permits - - - - -			90

Respectfully submitted,  
 Sydney B. White  
 Chief Inspector

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - PREVIOUS RECORD - 30 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against UNION OF BROTHERLY LOVE 524-526 West Street Camden, N. J., Holder of Club License CB-28 issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

CONCLUSIONS AND ORDER

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

BY THE COMMISSIONER:

Defendant pleaded guilty to the following charge:

"On Sunday, March 5, 1944, during the late afternoon and early evening, you sold, served and delivered and suffered and permitted the sale, service and delivery of alcoholic beverages on your licensed premises, in violation of Section 5 of an Ordinance, adopted by the Board of Commissioners of the City of Camden, New Jersey, on December 27, 1937, which Section prohibits any such activity after 2:00 A. M. on Sunday."

The file in this case discloses that two investigators of the Department of Alcoholic Beverage Control entered defendant's premises at about 6:50 P. M. March 5, 1944. They observed twelve men standing at the bar or seated at tables, all of whom were drinking beer.

As a mitigating circumstance, defendant alleges that the beer was being served to four or five members of the club after the adjournment of a meeting held on Sunday afternoon. In fairness to defendant I should state that the investigators report that all persons present were members of the club. While no sale of alcoholic beverages to non-members is alleged in this case, the local ordinance prohibits the service and delivery of alcoholic beverages after 2:00 A. M. on Sunday to members as well as to non-members.

As to penalty: On December 21, 1942 I suspended defendant's license for a period of fifteen days, with a remission of five days for the plea, after it had pleaded guilty to similar charges. Re Union of Brotherly Love, Bulletin 544, Item 4. Since this is a second similar violation, I must, following the well established precedent, double the usual penalty for Sunday sales by a club licensee and suspend the license for a period of thirty days, with a remission of five days for the guilty plea, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 3rd day of May, 1944,

ORDERED, that Club License CB-28, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Union of Brotherly Love, for premises 524-526 West Street, Camden, be and the same is hereby suspended for twenty-five days, commencing at 2:00 A. M. May 9, 1944 and terminating at 2:00 A. M. June 3, 1944.

ALFRED E. DRISCOLL Commissioner.

8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - LICENSEE PAID FINE OF \$25.00 - LICENSE SUSPENDED FOR 10 DAYS IN DISCIPLINARY PROCEEDINGS - APPLICATION TO LIFT GRANTED UPON THE EXPIRATION OF 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against HARRY SANTHOUSE 266 Union Boulevard Totowa, N. J.,

Holder of Plenary Retail Consumption License C-7 issued by the Borough Council of the Borough of Totowa.

In the Matter of a Petition by HARRY SANTHOUSE

To Lift the Automatic Suspension of Plenary Retail Consumption License No. C-7 issued by the Borough Council of the Borough of Totowa.

CONCLUSIONS AND ORDER

Arthur S. Smith, Esq., Attorney for Defendant and Petitioner. Edward F. Hodges, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On April 24, 1944 Harry Santhouse was fined the sum of \$25.00 in the First Criminal Judicial District Court of Passaic County after he had pleaded guilty to a charge of selling alcoholic beverages to minors, in violation of R. S. 33:1-77. Because of said conviction his license C-7 was automatically suspended for the balance of its term. R. S. 33:1-31.1. On April 27, 1944, at about 5:00 P. M., his license was picked up by an agent of the Department of Alcoholic Beverage Control and no activities under said license have been conducted since that time.

Thereafter, disciplinary proceedings were instituted by this Department against Harry Santhouse. The charges therein allege that:

"1. On the evening of April 14, 1944, you sold alcoholic beverages to Charles (Carmelo) --- and John ---, minors, in violation of R. S. 33:1-77.

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

Defendant has pleaded guilty in the disciplinary proceedings and he has filed a petition to lift the automatic suspension of his license.

An examination of the file in the disciplinary proceedings discloses that defendant served a glass of beer to each of the minors mentioned in the charges. Each minor was seventeen years of age.

As to penalty in the disciplinary proceedings: Defendant has no prior adjudicated record. Since the minors were only seventeen years of age, I shall suspend the license for fifteen days, less five days for the plea, making a net suspension of ten days. The suspension will be considered as having begun at the time the license was picked up on April 27, 1944, and will continue in effect until ten days have expired from said time.

As to the petition: The criminal conviction resulted from the sale to minors referred to in the disciplinary proceedings. I shall grant the relief sought in the petition after the automatic suspension has been in effect for ten days, so that the automatic suspension may be lifted when the suspension imposed in the disciplinary proceedings has been served.

Accordingly, it is, on this 3rd day of May, 1944,

ORDERED, that the petition to lift the automatic suspension of License C-7, held by Harry Santhouse, is granted, effective at 5:00 P. M. May 7, 1944. Until then the license stands suspended.

ALFRED E. DRISCOLL  
Commissioner.

- 9. DISCIPLINARY PROCEEDINGS - LICENSEE FILED FALSE REPORTS WITH STATE TAX COMMISSIONER, IN VIOLATION OF R. S. 54:45-1 AND R. S. 54:47-3 - STORAGE OF ALCOHOLIC BEVERAGES OFF THE LICENSED PREMISES, IN VIOLATION OF R. S. 33:1-2 - 20 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against )  
JAMES FRANCIS KEANE )  
T/a KEANE'S TAVERN )  
458 River Road )  
North Arlington, N. J., )  
Holder of Plenary Retail Consumption License C-10 issued by the )  
Borough Council of the Borough )  
of North Arlington. )  
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CONCLUSIONS  
AND ORDER

Winne & Banta, Esqs., Attorneys for Defendant-Licensee.  
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee has pleaded guilty to the following charges:

- "1. You failed, in violation of R. S. 54:45-1 and R. S. 54:47-3, to file with the State Tax Commissioner requisite reports disclosing the alcoholic beverages stored, purchased and sold by you during the months of November 1942 to March 1943, both inclusive, in that you filed for these months false reports of said storage, purchase and sales.

"2. During the period between November 1942 and March 15, 1943, and theretofore, alcoholic beverages intended for sale in your licensed premises were stored by you in your dwelling at 473 River Road, North Arlington, which dwelling was not licensed for the storage or warehousing of alcoholic beverages, such storage by you therefore being in violation of R. S. 33:1-2."

R. S. 54:45-1 requires defendant to file with the State Tax Commissioner on or before the twentieth day of each month a report, under oath, which shall disclose the amount of alcoholic beverages stored, withdrawn from storage, purchased and sold by the defendant during the preceding month.

R. S. 54:47-3 provides that any person who shall file with the State Tax Commissioner any false or fraudulent report or statement with the intent to defraud the State or evade payment of any tax, penalty or interest, or any part thereof, which shall be due pursuant to the provisions of Title 54, subtitle 8 of the Revised Statutes, shall be guilty of a misdemeanor.

R. S. 33:1-31 provides that the Commissioner of Alcoholic Beverage Control may suspend or revoke a license for various causes, including failure to comply with any of the provisions of subtitle 8 of the title Taxation (§54:41-1 et seq.).

R. S. 33:1-2 makes it unlawful to "warehouse" alcoholic beverages in this State "except pursuant to and within the terms of a license, or as otherwise expressly authorized."

On March 15, 1943 investigators of the Department seized at the residence of the defendant a large quantity of liquor which had been stored there for the purpose of avoiding the payment of Federal floor tax. In a separate proceeding with respect to the forfeiture of the said seized liquor, the defendant appeared in his own behalf and stated that he did not know it was unlawful to store alcoholic beverages in unlicensed premises. He admits storing the liquor at his residence in an attempt to evade the floor tax, as he states he did not have sufficient money to pay the said tax.

Defendant has had no record of any kind prior to this offense. In addition to the payment of the floor tax to the Federal government, he has had to pay the further sum of \$2,216.69 in compromise of his criminal and civil liability under the Federal law. He has also been required to pay a fee of \$500.00 for a retroactive permit validating the unlawful storage, together with costs incurred with the seizure by this Department. A further penalty must be imposed upon him for the violation of the Alcoholic Beverage Law. The defendant has been permitted to secure the return of the seized liquor on the basis of his statements and past record.

I consider this a serious violation and will, therefore, suspend the defendant's license for a period of twenty days. Re Miller, Bulletin 573, Item 5. Five days will be remitted for the guilty plea, making a net suspension of fifteen days.

Accordingly, it is, on this 4th day of May, 1944,

ORDERED, that Plenary Retail Consumption License C-10, issued by the Borough Council of the Borough of North Arlington to James Francis Keane, t/a Keane's Tavern, for premises 458 River Road, North Arlington, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 A. M. May 11, 1944 and terminating at 2:00 A. M. May 26, 1944.

ALFRED E. DRISCOLL  
Commissioner.

10. DISCIPLINARY PROCEEDINGS - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT UPON CORRECTION OF ILLEGAL SITUATION AND EXPIRATION OF 10 DAYS' SUSPENSION - ILLEGAL SITUATION CORRECTED AND 10 DAYS' SUSPENSION HAVING EXPIRED - APPLICATION TO LIFT GRANTED.

In the Matter of Disciplinary Proceedings against MONTY'S TAVERN, INC. 1247 Woodbridge Ave. Raritan Township P.O. RFD 1, Perth Amboy, N. J.,)

ORDER

Holder of Plenary Retail Consumption License C-29, issued by the Board of Commissioners of Raritan Township, Middlesex County. -----)

Edmund A. Hayes, Esq., by William F. McClóskey, Esq., Attorney for Licensee.

BY THE COMMISSIONER:

On April 19, 1944 the plenary retail consumption license of Monty's Tavern, Inc. for premises at 1247 Woodbridge Avenue, Raritan Township, was suspended for the balance of its term, effective on April 24, 1944, after it had pleaded non vult to charges which alleged, in substance, that it falsely concealed that Nicholas Montaperto was the real and beneficial owner of its corporate stock. Re Monty's Tavern, Inc., Bulletin 615, Item 13.

In the order suspending the license as aforesaid, leave was given to petition to lift the suspension after ten days thereof had been served, upon proof of correction of the illegal situation. Pursuant thereto, the licensee has presented satisfactory evidence that the corporate stock is equally divided between Nicholas Montaperto and his wife, Margaret Montaperto. Since the prior unlawful situation has thus been corrected, and since the licensed premises have remained closed for more than ten days, the suspension will be lifted so as to allow the licensee to resume business on May 6, 1944 at 7:00 A. M.

Accordingly, it is, on this 5th day of May, 1944,

ORDERED, that the suspension heretofore imposed against Plenary Retail Consumption License C-29, issued by the Board of Commissioners of Raritan Township, Middlesex County to Monty's Tavern, Inc., for premises 1247 Woodbridge Avenue, Raritan Township, be lifted, and the said license is hereby restored to full force and operation, effective on May 6, 1944, at 7:00 A. M.

ALFRED E. DRISCOLL Commissioner.

By: Edward J. Dorton Deputy Commissioner.

11. APPELLATE DECISIONS - VAN DEN KOOY v. HOBOKEN.

ALIDA VAN DEN KOOY, )  
 T/a DUTCH BAR, )  
 )  
 Appellant, )  
 )  
 -vs- )  
 )  
 BOARD OF COMMISSIONERS OF THE )  
 CITY OF HOBOKEN, )  
 )  
 Respondent )  
 ----- )

ON APPEAL  
CONCLUSIONS AND ORDER

John J. Meehan, Esq., Attorney for Appellant.  
Robert F. McAlevy, Jr., Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the action of the respondent revoking appellant's current plenary retail consumption license for her tavern at 409 Washington Street, Hoboken, New Jersey.

In the disciplinary proceedings before the respondent, the appellant entered a plea of not guilty to charges alleging, in substance, that

- (1) she falsely answered question 30 in her application for her current license and thereby concealed the interest of her husband in the license;
- (2) she permitted the sale and service of alcoholic beverages to a minor in violation of Rule 1 of State Regulations No. 20;
- (3) she sold and permitted the service of alcoholic beverages to persons actually or apparently intoxicated and allowed the consumption of same on her premises by such persons in violation of Rule 1 of State Regulations No. 20;
- (4) she permitted and suffered disturbances and brawls on the licensed premises in violation of Rule 5 of State Regulations No. 20; and
- (5) she permitted and suffered women conversationalists and other persons of ill repute upon the licensed premises in violation of a local resolution and regulation adopted by the respondent on December 17, 1935.

At the conclusion of the hearing below, licensee was found guilty on all charges.

The issues raised by the appeal are essentially those developed by the appellant's plea of not guilty to the charges summarized above. Under the Rules Governing Appeals, the burden of establishing reversible error in respondent's action rests with the appellant. I am satisfied, after a careful examination of the entire record, that the appellant has not sustained this burden.

On the night of February 20, 1944, the licensee and her husband were observed seated at the bar in the licensed premises. Two bartenders, one a Dutch seaman, were on duty. The place was crowded.

Ten of the patrons were Norwegian seamen. An ABC agent testified that, despite the fact that all these seamen were apparently intoxicated, the bartender continued to serve them alcoholic beverages which the licensee and her husband permitted them to consume. The agent who was visiting the premises on the night in question testified that he observed that these men were "staggering", "incoherent in speech", "boisterous and loud." The licensee, while denying that the sailors were intoxicated, conceded "of course, they had a couple of drinks in them\*\*\*."

The respondent's determination that the licensee sold alcoholic beverages to persons actually or apparently intoxicated in violation of Rule 1 of State Regulations No. 20 is supported by the evidence and therefore affirmed.

The licensee, on cross-examination, admitted that a number of fights had occurred on her licensed premises. By way of explanation, she suggests that these fights were the product of the traditional arguments that have engrossed British and American seamen down through the years. A closer examination of the record, however, leads me to the conclusion that these fights were the direct result of the licensee's failure to properly control her premises. The fair inference to be drawn from the testimony is that the disturbances and brawls referred to in Charge 4 are traceable to an overindulgence in alcoholic beverages by patrons on the licensed premises, for which the licensee must assume responsibility.

Respondent's finding with respect to Charge 4 is accordingly affirmed.

With respect to Charge 5, respondent found the licensee guilty of violating the local regulation forbidding "women conversationalists" and "the assembling of females on the licensed premises for the enticing of customers." This regulation was first considered and approved by me in Miche v. Hoboken, Bulletin 509, Item 10. The descriptive term "women conversationalists", as used in the local regulation, has acquired a well defined meaning. The obvious purpose of the regulation, as Justice Collins indicates in Hoboken v. Goodman, 68 N. J. L. 217, was to prevent "women from forming part of the allurements of drinking places." While the comment of the learned Justice was made before the advent of the modern night club, it is apparent that the regulation was intended to prevent the use of women either as hostesses or casual "pick ups" (amateur or otherwise) to promote the sale of alcoholic beverages. In the instant case, it appears from the record that unescorted females frequented the licensed premises and were permitted to "pick up" men therein. It further appears that these unescorted women promoted the sale of alcoholic beverages in that they were frequently purchased drinks at the expense of customers. I am satisfied that these "pick ups" and purchases occurred with sufficient frequency to put the licensee and her agents on notice and to have required affirmative action on their part to prevent these women from forming part of the allurements of her tavern, in violation of the local regulation. It is to be noted that even if the licensee were unaware of what was taking place on her premises, she is, nonetheless, strictly accountable for all violations of her employees. Re Kneller, Bulletin 49, Item 4; Re DeGeeter, Bulletin 449, Item 2.

The finding of the municipal issuing authority with respect to Charge 5 is affirmed. The respondent has, in recent years, adopted a policy of revoking the license of those found guilty of violating the regulation referred to in Charge 5. The affirmation of respondent's findings with respect to three of the five charges is, under the circumstances, sufficient to support the revocation of the license.

In view of the foregoing, it is not necessary to discuss the testimony with respect to Charges 1 and 2 in detail. Suffice it to say that I find the evidence supports respondent's decision with respect to Charge 1. With respect to Charge 2, the sale of alcoholic beverages to a minor, it appears that the latter represented in writing that she was over twenty-one years of age. There does not appear to be any testimony in the record that the minor purchased alcoholic beverages prior to the date of this written representation. The licensee, while denying that alcoholic beverages were sold to the minor, has endeavored to establish a defense pursuant to R.S. 33:1-77. This defense appears to have been established and, accordingly, the respondent's finding with respect to Charge 2 is reversed.

The evidence does not support appellant's ground of appeal that the action of respondent was the result of prejudice or that the penalty was unduly harsh and unwarranted. Nor was the appellant deprived of her "vested rights" and "constitutional guarantees" without due process of law, as claimed. The sale of alcoholic beverages has never been, in this State, a matter of right. Gaine v. Burnett, 122 N. J. L. 39. Nor does the licensee have a "vested right." Rather, the licensee holds "a special privilege" granted by the municipal issuing authority in the exercise of its sound discretion. Paul v. Gloucester County, 50 N. J. L. 585 (E. & A.); cf. Gaylord Trucking, Inc. v. Hoffman, 114 N. J. L. 522, 531.

Accordingly, it is, on this 8th day of May, 1944,

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

*Alfred E. Griswold*  
Commissioner.