

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

BULLETIN 606

FEBRUARY 16, 1944.

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

BULLETIN 606

FEBRUARY 16, 1944.

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary )  
Proceedings against )

GERMANO ALFARE, )  
126 - 61st Street, )  
West New York, New Jersey, )

Holder of Plenary Retail Consump- )  
tion License C-9 issued by the )  
Board of Commissioners of the )  
Town of West New York. )  
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CONCLUSIONS  
AND  
ORDER

Germano Alfare, Pro se.  
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

Licensee pleads guilty to the following charge:

"On Thursday, January 6, 1944, at about 10:55 P.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, viz., a quart bottle of beer, at retail in its original container for consumption off the licensed premises, thereby violating Rule 1 of State Regulations No. 38 which prohibits any such type of sale or delivery before 9:00 A.M. or after 10:00 P.M. on any weekday."

On the evening in question, at about 10:55 P.M., the licensee sold one quart of beer for consumption off the premises to agents of the Department of Alcoholic Beverage Control. Licensee states in mitigation of the offense that he was tired after a particularly heavy day and failed to note the hour.

The minimum penalty for such a violation is fifteen days' suspension. Re Starn, Bulletin 593, Item 9. Licensee has no prior record and, in view thereof, the minimum penalty will be imposed. Therefore, the license will be suspended for a period of fifteen days, less remission of five days for the plea, leaving a net suspension of ten days.

Accordingly, it is, on this 9th day of February, 1944,

ORDERED that plenary retail consumption license C-9, issued by the Board of Commissioners of the Town of West New York to Germano Alfare, for premises 126 - 61st Street, West New York, be and the same is hereby suspended for ten (10) days commencing at 3 A.M. February 14, 1944, and terminating at 3 A.M. February 24, 1944.

ALFRED E. DRISCOLL,  
Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77, RULE 1 OF STATE REGULATIONS NO. 20 AND LOCAL ORDINANCE - 30 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - LICENSEE PAID FINE OF \$50. - LICENSE SUSPENDED FOR 25 DAYS IN DISCIPLINARY PROCEEDINGS - APPLICATION TO LIFT GRANTED UPON THE EXPIRATION OF 25 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against )

CLARENCE & GRACE HARTMAN, )  
T/A HARTMAN'S CAFE, )  
9 Belvidere Avenue, )  
Washington, New Jersey, )

----- )  
Holders of Plenary Retail Consump- )  
tion License C-2 issued by the )  
Common Council of the Borough of )  
Washington. )

CONCLUSIONS  
AND  
ORDER

In the Matter of Petition by )

CLARENCE & GRACE HARTMAN )

To Lift the Automatic Suspension )  
of Plenary Retail Consumption )  
License C-2 issued by the Common )  
Council of the Borough of Washington. )  
----- )

Edward E. Stover, Esq., Attorney for Defendants and Petitioners.  
Gaylord R. Hawkins, Esq., Attorney for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

On January 26, 1944, Clarence Hartman pleaded guilty in the Warren County Court of Special Sessions to a charge of selling alcoholic beverages to a minor and was fined \$50. Because of said conviction the license held by Clarence Hartman and Grace Hartman, as partners, was automatically suspended for the balance of its term. R. S. 33:1-31.1. On January 28, 1944, the 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.

On January 31, 1944, disciplinary proceedings were instituted by this Department against Clarence and Grace Hartman. The charges therein alleged that on the night of December 31, 1943, and the early morning of January 1, 1944, and on divers dates theretofore, they sold alcoholic beverages to Lawrence ---, a minor, in violation of R. S. 33:1-77, in violation of Rule 1 of State Regulations No. 20 and in violation of the provisions of a local ordinance. On the same day Clarence Hartman and Grace Hartman filed a petition with me to lift the automatic suspension of their license. Thereafter they pleaded guilty to the charges set forth in the disciplinary proceedings.

As the disciplinary proceedings and the petition to lift the automatic suspension involve substantially the same facts, they may be considered together in this proceeding.

An examination of the file discloses that Lawrence --- was sixteen years and nine months of age when the violation occurred. In a statement given to an ABC investigator, Clarence Hartman admitted that at the time mentioned in the charges he served beer to the minor, but alleges that the minor had previously stated that he was twenty-one years of age. In a statement given to the same investigator, Lawrence --- states that he told the licensee that he was twenty-one; that the licensee remarked "I doubt if you are twenty-one," and that the licensee thereafter served him about a dozen glasses of beer without obtaining any written statement as to his age. See R. S. 33:1-77. The investigator reports that the minor was tall but appeared to be youthful. The reports in the file lead me to conclude that the minor was intoxicated when he left the licensed premises.

As to penalty in the disciplinary proceedings: The minimum penalty which has been imposed in cases involving sales to minors where no aggravating circumstances appear has been a suspension of the license for a period of ten days. It is hard to believe that Clarence Hartman thought that this sixteen-year old boy was of full age. While there is no evidence that alcoholic beverages were served to the boy while he was intoxicated, it does appear that the boy became intoxicated upon the licensed premises. Because of the aggravating circumstances of this case, the penalty fixed in the disciplinary proceedings will consist of a suspension of the license for thirty days, less five days for the guilty plea, making a net suspension of twenty-five days. The suspension will be considered as having begun on the date the license was picked up, namely, January 28, 1944, and will continue in effect until twenty-five days have expired from said date.

As to the petition: The criminal conviction resulted from the sale mentioned in the disciplinary proceedings. It has been the policy of this Department to lift an automatic suspension when, and only when, the license has been suspended for what appears, in view of all the facts, to be a sufficiently penalizing length of time. Re Solitaire, Bulletin 538, Item 4. Considering the facts set forth above, I shall grant the relief sought in the petition after the automatic suspension has been in effect for a period of twenty-five 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 9th day of February, 1944,

ORDERED that the petition to lift the automatic suspension of License C-2, held by Clarence and Grace Hartman, t/a Hartman's Cafe, is granted, effective at 7 A.M. February 22, 1944. Until then, the license stands suspended.

ALFRED E. DRISCOLL,  
Commissioner

3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77, RULE 1 OF STATE REGULATIONS NO. 20 AND LOCAL ORDINANCE - 30 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - LICENSEE PAID FINE OF \$50. - LICENSE SUSPENDED FOR 25 DAYS IN DISCIPLINARY PROCEEDINGS - APPLICATION TO LIFT GRANTED UPON THE EXPIRATION OF 25 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against

WM. L. SMITH,  
T/A PIP'S TAVERN,  
15 Belvidere Avenue,  
Washington, New Jersey,

Holder of Plenary Retail Consumption License C-1 issued by the Common Council of the Borough of Washington.

CONCLUSIONS AND ORDER

In the Matter of Petition by

WILLIAM L. SMITH

To Lift the Automatic Suspension of Plenary Retail Consumption License C-1, issued in the name of Wm. L. Smith, by the Common Council of the Borough of Washington.

Edward E. Stover, Esq., Attorney for Defendant and Petitioner.  
Nathan Davis, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On January 26, 1944, William L. Smith pleaded guilty in the Warren County Court of Special Sessions to a charge of selling alcoholic beverages to minors, and was fined \$50. Because of said conviction his license was automatically suspended for the balance of its term. R. S. 33:1-31.1. On January 28, 1944, his license was picked up by an agent of the Department of Alcoholic Beverage Control, and no activities thereunder have been conducted since that time.

On January 31, 1944, disciplinary proceedings were instituted by this Department against the licensee. The charges therein alleged that on the night of January 1, 1944, and the early morning of January 2, 1944, he sold alcoholic beverages to four minors named in the charges, in violation of R. S. 33:1-77, in violation of Rule 1 of State Regulations No. 20 and in violation of a local ordinance. On the same day William L. Smith filed a petition with me to lift the automatic suspension of his license. Thereafter he pleaded guilty to the charges set forth in the disciplinary proceedings.

As the disciplinary proceedings and the petition to lift the statutory automatic suspension involve substantially the same facts, they will be considered together in this proceeding.

An examination of the file discloses that on the night of January 1, 1944, Elmer ---, then 17 years of age, Willard ---, then 20 years of age, and Alfred ---, then 15 years and 6 months of age, while seated at a booth in defendant's premises, were served alcoholic beverages by Melvin Burd, a bartender; that subsequently Burd and the licensee each served additional drinks to Elmer and Willard. These three minors left defendant's premises and met David ---, 20 years of age. Later in the same evening, Elmer, Willard and David entered defendant's premises and each was served a glass of beer by Burd, the bartender. Elmer and Willard admitted that, before the first drinks were served, they told the bartender that each of them was over the age of 21 years, but it is evident that no written statements were obtained from any of the minors. See R. S. 33:1-77.

As to penalty in the disciplinary proceedings: The fact that four minors were involved, two of whom were, respectively, 17 and 15 years of age, are aggravating circumstances. The penalty fixed in the disciplinary proceedings will consist of a suspension of the license for thirty days, less five days for the guilty plea, making a net suspension of twenty-five days. The suspension will be considered as having begun on the day on which the license was picked up, namely, January 28, 1944, and will continue in effect until twenty-five days have expired from said date.

As to the petition: The criminal conviction resulted from the sales mentioned in the disciplinary proceedings. Considering the facts set forth above, I shall grant the relief sought in the petition after the automatic suspension has been in effect for a period of twenty-five 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 9th day of February, 1944,

ORDERED that the petition to lift the automatic suspension of License C-1, held by Wm. L. Smith, t/a Pip's Tavern, is granted, effective at 7 A.M. February 22, 1944. Until then, the license stands suspended.

ALFRED E. DRISCOLL,  
COMMISSIONER.

4. MINORS - RESPONSIBILITY AND LIABILITY OF LICENSEES WHO SELL, SERVE OR DELIVER ALCOHOLIC BEVERAGES TO MINORS, OR PERMIT MINORS TO CONSUME ALCOHOLIC BEVERAGES ON LICENSED PREMISES - HEREIN DISCUSSION OF STATE LAW AND REGULATIONS AND MUNICIPAL REGULATIONS ON THE SUBJECT, INCLUDING LICENSEES' PRECAUTIONARY CONDUCT NECESSARY TO CONSTITUTE LEGAL DEFENSE TO CRIMINAL OR DISCIPLINARY ACTION FOR VIOLATION THEREOF.

February 7, 1944

Mr. Nelson S. Butera  
Town Clerk  
Morristown, New Jersey

Dear Mr. Butera:

I have your letter of January 26th, which was prompted by my Conclusions and Order (dated January 10, 1944), suspending the license of Ralph Inglese for a period of ten days.

You inform me that my letter of January 10th and the Conclusions and Order enclosed therewith were read at the January 21st meeting of your Board of Aldermen, whereupon the Board discussed the following two questions upon which it requests my advice:

- "1. In the case of a sale to minors, the Board feel the licensee should be given some protection. Would it be in order for the licensee to have any individual who might appear to be a minor execute a statement certifying to his age and in case this could be done, would it represent any degree of protection to the licensee?"
- "2. This is a case which actually happened and which raised the point in question. Assuming an adult and a minor went into a licensed premises (in this case a restaurant) and ordered a glass of wine, paid for it and then presented it to the minor to drink. In this case the waitress suspected that the adult was going to give this to the minor to drink and promptly reported it to the owner, the licensee, who in turn, prevented the purchaser from giving the drink to the minor. After much discussion the purchaser was refunded his money and left the premises. If the adult had been allowed to give the drink to the minor and it was consumed on the premises, in what position does it put the licensee?"

The Board's questions, and related questions of equal importance, emphasize anew the whole serious problem of "minors and liquor" and call for a full setting forth of the pertinent laws and regulations.

Section 33:1-77 of the Revised Statutes reads:

"Anyone who sells any alcoholic beverage to a minor shall be guilty of a misdemeanor; provided, however, that the establishment of all of the following facts by a person making any such sale shall constitute a defense to any prosecution therefor: (a) that the minor falsely represented in writing that he or she was twenty-one (21) years of age or over, and (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one (21) years of age or over, and (c) that the sale was made in good faith relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one (21) years of age or over."

Note that the minor's mere signing of the statement is not sufficient. For an adequate defense under the statute, the facts stated in (a) and (b) and (c) thereof must be established. (See Re Hoffacker, Bulletin 550, item 4.)

The Department of Alcoholic Beverage Control does not furnish licensees with cards to be signed by persons who wish to buy alcoholic beverages and who are suspected of being minors. Re Fornaro, Bulletin 339, item 10, suggests that licensees have such cards printed and sets forth the recommended form.

The Board of Aldermen will understand that R. S. 33:1-77 deals with a misdemeanor and, thus, that a criminal prosecution for violation of the section must be at the county level upon indictment by a County Grand Jury. Further, however, if a licensee is convicted criminally of violation of R. S. 33:1-77 (or of any other provision of the Alcoholic Beverage Law), the license suspends

automatically and without notice, such automatic suspension continuing for the balance of the license term unless the State Commissioner, in his discretion and for good cause shown, shall order otherwise. (See R. S. 33:1-31.1.) But regardless of the outcome of a criminal prosecution under R. S. 33:1-77, or in the absence of such a prosecution, a violation of that section (or of any other provision of the Alcoholic Beverage Law) subjects the licensee to disciplinary action, as distinguished from criminal prosecution, and is cause for suspension or revocation of the license. (See R. S. 33:1-31(a) and 33:1-31.1)

In addition to R. S. 33:1-77, there is, as you know, a State regulation concerning sales to minors. Rule 1 of State Regulations No. 20 reads:

"1. No licensee shall sell, serve, deliver or allow, permit or suffer the service or delivery of any alcoholic beverage, directly or indirectly, to any person under the age of twenty-one (21) years..., or allow, permit or suffer the consumption of alcoholic beverages by any such person upon the licensed premises."  
(underscoring mine.)

I have already stressed the point that the establishment of three facts designated in R. S. 33:1-77 constitutes a defense to any criminal prosecution for selling to a minor in violation of that section. Now I wish to make it clear that I deem the establishment of those three facts an adequate defense to disciplinary proceedings before me for violation of R. S. 33:1-77 or of the above-quoted Rule 1 of State Regulations No. 20. Thus, to the extent that licensees and their employees scrupulously observe the provisions of R. S. 33:1-77 they are afforded a very considerable "degree of protection".

Please observe the underscored provision of the indicated Rule 1. Pursuant to that provision, a licensee who allows, permits or suffers a minor to consume alcoholic beverages on the licensed premises is violating the rule. Certainly, the Morristown licensee (under the circumstances described in point 2 of your letter) was entirely right in preventing the adult purchaser from giving the drink to the minor. Had he permitted the minor to consume the wine on the premises, he would have subjected his license to suspension or revocation.

The episode brings to mind other situations in which a licensee must be particularly careful not to provide an extra glass so that a customer may give beer to a minor (Re Koopman, Bulletin 256, item 2); or to serve liquor at empty places at tables when it may be intended for minors (Re Morganstern and Oliner, Bulletin 292, item 9); or to serve two drinks to one person at the bar when the second person who is not at the bar may be a minor (Re Gahr, Bulletin 377, item 7); or, similarly, three drinks to two persons (Re Solomon, Bulletin 586, item 2). Under these and comparable circumstances, a licensee's only safe and proper course is to take every precaution against his own and his employees' selling, serving or delivering to any minor and, with equal zeal, not to allow a minor to consume any alcoholic beverages on the licensed premises. The public policy of the State of New Jersey, as expressed in the Alcoholic Beverage Law (Section 77), is to protect minors -- even against themselves. I have no hesitancy in saying that I am wholeheartedly in accord with the policy expressed in our control law.

There is one further matter. Sections 8 and 26 of the Morristown ordinance adopted September 6, 1940 read:

"8. No licensee shall sell, serve, deliver or allow the sale, service or delivery of any alcoholic beverage, directly or indirectly to any person under the age of twenty-one years, or to any person actually or apparently intoxicated, or allow the consumption of alcoholic beverages by any such person upon the licensed premises."

"26. Persons under the age of twenty-one years shall not be allowed to frequent, loiter or remain in any room or rooms used or devoted to the sale, service or consumption of alcoholic beverages upon a licensed premises, unless accompanied by the minor's own parent, guardian or adult husband or wife, provided, however, that this provision shall not apply to restaurants, as hereinbefore in Paragraph 20 defined, or to guest rooms and private and public dining rooms in hotels."

It is to be remarked that Section 8 of the ordinance, following exactly the text of State Regulations No. 20, Rule 1, deals not only with sale, service and delivery to minors but also with consumption by minors upon the licensed premises; and that Section 26 places upon the Town's licensees an additional responsibility concerning the presence of minors upon licensed premises. I would point out, also, Section 34(a) of the ordinance, reading:

"34. (a) Any person who shall violate any of the provisions of this ordinance shall, upon conviction thereof, be punished by a fine not exceeding two hundred dollars or imprisonment not exceeding ninety days, or by both such fine and imprisonment, in the discretion of the court; and each day such violation shall be continued shall be deemed and taken to be a separate and distinct offense."

Very truly yours,  
ALFRED E. DRISCOLL  
Commissioner.

5. MORAL TURPITUDE - CRIME OF HIGHWAY ROBBERY AND KIDNAPPING FOUND TO INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - EVIDENCE OF REHABILITATION - GOOD CONDUCT FOR FIVE YEARS LAST PAST AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION TO LIFT GRANTED.

In the Matter of an Application )  
to Remove Disqualification Be- )  
cause of a Conviction, Pursuant )  
to R. S. 33:1-31.2. ( )  
Case No. 318. ( )  
- - - - - )

CONCLUSIONS  
AND  
ORDER

BY THE COMMISSIONER:

This matter is before me, pursuant to the provisions of R. S. 33:1-31.2, on an application to remove the statutory disqualification resulting from the conviction of crime involving moral turpitude.

There can be no question that applicant has been convicted

of at least one crime involving moral turpitude. In 1930 and 1931 he seems to have been involved in a series of crimes involving highway robbery and kidnapping. Upon conviction of these crimes applicant was sentenced to various terms in Rahway Reformatory and State Prison. Most of the terms overlapped. The longest term seems to have been for five years in State Prison, to which he was committed in April 1931. He was transferred to the Rahway Reformatory in June 1931 and subsequently, in December 1933, paroled for a maximum time to the end of his sentence in April 1936. The crimes committed by applicant involve moral turpitude. Re Case No. 290, Bulletin 586, Item 4.

In 1923 and 1924, at which time applicant was about eighteen or nineteen years of age, he was involved with the police of the town wherein he then lived. These convictions seem to have involved violations of the Motor Vehicle Act. Whether they involve moral turpitude is of no importance because if his disqualification is removed as to one conviction it is removed as to all the convictions disclosed at his hearing.

Since applicant's release on probation in December 1933 he seems to have lived a normal, useful, and law-abiding life. He was married at the time of his conviction on the highway robbery and kidnapping charges. His family seems to have taken him back after his release and he seems to have provided them with support comparable with their station in life. Since his release, it would appear from the record that he has been satisfactorily employed by two different employers. He now finds that he is unable to do the work in which he has been engaged due to the physical strain incident thereto, and has been compelled to give up this work.

Applicant's record with the parole board seems to have been very satisfactory. The parole officer states in his final report that during the parole period applicant had no conflict with the law and made a favorable adjustment in every respect.

Three witnesses produced by applicant, none of whom are engaged in the alcoholic beverage business, and all of whom live in the neighborhood in which applicant has lived for approximately nine years, testified that they have known applicant for various periods, from seven to eighteen years, and that they are well acquainted with him and with his family. They stated that applicant's reputation, as a law-abiding citizen, among the people whom they know and who know applicant, and in his neighborhood, is very good. It seems that rehabilitation has been quite satisfactory.

I find that petitioner has conducted himself in a law-abiding manner during the five years immediately past and that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 9th day of February, 1944,

ORDERED that petitioner's statutory disqualification because of the convictions described herein be and the same is hereby removed, in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL  
Commissioner.

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

In the Matter of Disciplinary Proceedings against CARRIE WOOPY T/A MA WOOPY 201 Park Avenue Lyndhurst, New Jersey,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-23 issued by the Board of Commissioners of the Township of Lyndhurst.

Carrie Wooby, Pro Se. Gaylord R. Hawkins, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee has pleaded guilty to charges that on November 17, 1943, she sold alcoholic beverages to, and permitted the consumption of alcoholic beverages upon licensed premises by John J. --- and Anthony ---, both minors, aged 18 years and 20 years respectively, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

On the evening in question, agents of the Department of Alcoholic Beverage Control observed the licensee serve a party of four - three of them with alcoholic beverages and the fourth with a soft drink. Upon being questioned, John J. --- and Anthony ---, two of the three served with alcoholic beverages admitted that they were under age. The licensee in mitigation stated to the agents that she had inquired from the four as to their ages and that three stated they were over twenty-one while the fourth admitted she was 17, whereupon the licensee advised them that she would only serve three with alcoholic drinks while the fourth would have to order a soft drink.

The licensee, who was apparently in doubt, was satisfied to accept the verbal assurances of two members of the party that they were of full age. Defendant, however, cannot successfully defend herself against the charge of selling to minors unless she can show compliance with all the provisions of R. S. 33:1-77, namely, (a) that the minor falsely represented in writing that he or she was 21 years of age or over, and (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be 21 years of age or over, and (c) that the sale was made in good faith relying upon such written representation and appearance and in the reasonable belief that the minor was actually 21 years of age or over.

As to penalty: The license for the premises in question was formerly held by Woobysen Corporation, of which Carrie Wooby was president and owner of nine of the eleven outstanding shares of stock. It is evident that Carrie Wooby, the present licensee, was the guiding spirit of Woobysen Corporation and, as such, should be chargeable with its prior record. On June 11, 1942, the local issuing authority suspended the license of Woobysen Corporation for a period of three days, effective June 22, 1942, after the corporation had pleaded guilty to charges of employing hostesses and

selling alcoholic beverages to a minor. At that time I advised the local issuing authorities that the penalty then imposed was inadequate, especially in view of the fact that on December 8, 1936, the license of the corporation had been suspended for selling alcoholic beverages to minors. The only mitigating circumstance in the present case is that the licensee refused to sell alcoholic beverages to the 17-year old minor. Cf. Re Pannetta, Bulletin 564, Item 1. Since the first violation occurred more than seven years ago, I shall impose in this proceeding the same penalty which would be imposed in a case involving a second violation for sales to minors. I shall suspend the license for a period of twenty days, less five for the guilty plea, making a net suspension of fifteen days.

Accordingly, it is, on this 9th day of February, 1944,

ORDERED that plenary retail consumption license C-23, issued by the Board of Commissioners of the Township of Lyndhurst to Carrie Wooby, t/a Ma Wooby's, for premises 201 Park Avenue, Lyndhurst, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 A.M. February 14th, 1944 and terminating at 2:00 A.M. February 29th, 1944.

ALFRED E. DRISCOLL  
Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20. - AGGRAVATING CIRCUMSTANCES - 40 DAYS' SUSPENSION LESS FIVE FOR PLEA.

In the Matter of Disciplinary Proceedings against  
 PAUL SZABO,  
 T/A SZABO'S TAVERN  
 Riva Avenue, Brookview,  
 East Brunswick Township,  
 P. O. RFD #1, New Brunswick, N. J.,  
 Holder of Plenary Retail Consumption License C-14, issued by the Township Committee of the Township of East Brunswick.

CONCLUSIONS  
 AND  
 ORDER

Geza Stamberger, Esq., Attorney for Defendant-licensee.  
 Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads non vult to the charge of sale, service and permitting consumption of alcoholic beverages by minors on the licensed premises in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The file discloses that, on November 6, 1943, and on divers days prior thereto, alcoholic beverages were sold and served to and consumed by sundry groups of minors, two of the minors being 16 years of age, five 17 years of age, and the remaining three 18, 19, and 20 years of age.

According to the statements of five of the minors, they had visited the tavern merely on one occasion. Three of these had consumed a glass of beer apiece, whereas the other two had three and six glasses of beer, respectively. Three other minors stated that they were there at three different times and drank two or three glasses of beer on each occasion. The remaining two minors claimed to be at the defendant's place of business on two occasions and while there each consumed one or two glasses of beer.

Ordinarily, the penalty for sale of alcoholic beverages to a minor or minors where no aggravating circumstances appear is suspension of the license for a period of ten days. See Re Abrams, Bulletin 562, Item 8. In the present case, however, the youthfulness of seven of the minors warrants a severe penalty. While the licensee does not seem to have been personally involved in the sales, the doctrine of respondeat superior is well established in the Alcoholic Beverage Control Law. Licensees must, of necessity, be held responsible for the acts of their employees and servants. Re Kurian, Bulletin 517, Item 2.

Under the circumstances in the instant case, I shall impose a penalty of forty days suspension with five days remission for the plea entered herein, making a net suspension of thirty-five days.

Accordingly, it is, on this 11th day of February, 1944,

ORDERED that Plenary Retail Consumption License C-14 issued by the Township Committee of the Township of East Brunswick to Paul Szabo, t/a Szabo's Tavern, for premises Riva Avenue, Brookview, East Brunswick Township, be and the same is hereby suspended for a period of thirty-five (35) days, commencing at 2:00 A.M. February 16, 1944, and terminating at 2:00 A.M. March 22, 1944.

ALFRED E. DRISCOLL  
Commissioner.

8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - FAILURE TO DISPLAY SIGN IN VIOLATION OF RULE 3 OF STATE REGULATIONS NO. 38 - PREVIOUS RECORD - 40 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against )

FRANCIS J. ORLANDO )  
500 Paul Street )  
Gloucester City, N. J. )

CONCLUSIONS  
AND  
ORDER

Holder of Plenary Retail Consumption License C-11, issued by the Common Council of the City of Gloucester City. )  
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Francis J. Orlando, Pro Se.

Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant licensee pleaded guilty to charges alleging (1) that on Wednesday, August 25, 1943, he sold six bottles of

beer for consumption off his licensed premises, in violation of Rule 1 of State Regulations No. 38; and (2) that he failed to have a proper sign visible from the exterior, in violation of Rule 3 of State Regulations No. 38. Regulations No. 38, promulgated August 10, 1943, effective August 16, 1943, at 9:00 A.M., provide as follows:

"1. No licensee shall sell or deliver, or allow, permit or suffer the sale or delivery of any alcoholic beverage at retail in original containers for consumption off the licensed premises, on Sunday, or before 9:00 A.M. or after 10:00 P.M. on any other day of the week.

"2. Rule 1 shall not be construed to permit the sale or delivery of any alcoholic beverage during hours when such sale or delivery is prohibited by an applicable municipal regulation or referendum.

"3. Each licensee permitted to sell at retail for off-premises consumption shall keep prominently displayed, on or near the entrance to the licensed premises and clearly visible from the exterior, a sign not less than 10 x 12 inches in size stating clearly and legibly the legal hours during which the sale of alcoholic beverages in original containers for off-premises consumption is permitted.

"4. Any violation of these rules shall subject the license to suspension or revocation."

The defendant's plea of forgetfulness with respect to Rule 1 and a misunderstanding of Rule 3 does not condone his violations. Licensees must not forget regulations. There is no possible room for misunderstanding the language of Rules 1 and 3 of Regulations No. 38.

The usual penalty for selling alcoholic beverages during prohibited hours is fifteen days. Re Gattuso, Bulletin 587, Item 1. Ordinarily, I would add two days for the sign violation. I am, however, very much concerned over the licensee's prior record. There have been at least three violations since June 1940, for which the licensee has suffered various penalties. If it were not for the fact that the instant violation is unlike the previous violations for which the licensee has paid a penalty, and the further fact that it followed within a fairly short period of time the promulgation of Regulations No. 38, I would revoke the defendant's license. As it is, he will be given one last chance. His license will be suspended for a period of forty days. No remission will be granted for the guilty plea.

Accordingly, it is, on this 11th day of February, 1944,

ORDERED that plenary retail consumption license C-11 issued by the Common Council of the City of Gloucester to Francis J. Orlando, for premises 500 Paul Street, Gloucester City, be and the same is hereby suspended for forty (40) days, commencing at 2:00

A.M. February 16, 1944, and terminating at 2:00 A.M. March 27, 1944.

ALFRED E. DRISCOLL  
Commissioner.

9. STATE LICENSES - APPLICATION FOR LIMITED WHOLESALE LICENSE DENIED.

In the Matter of an Application )  
by )

JOHN BURNS, INC., )

For a Limited Wholesale License )  
for premises located at )

CONCLUSIONS  
AND  
ORDER

10-12 Black Horse Pike )  
(also known as 1643 Black )  
Horse Pike), )  
Mt. Ephraim, New Jersey. )

John L. Morrissey, Esq., Attorney for Applicant.  
George D. Rothermel, Esq., Attorney for Board of Commissioners of  
the Borough of Mt. Ephraim, an Objector.

BY THE COMMISSIONER:

On December 23, 1943, John Burns, Inc., a corporation of the State of New Jersey, filed an application with the State Commissioner of Alcoholic Beverage Control for a limited wholesale license for the premises mentioned above. On December 23 and December 30, 1943, the applicant caused notice of its application to be published in a newspaper, as required by statute. Subsequently, written objections to the issuance of the license were filed with the Commissioner. These written objections were received from Rev. Clifford J. Hewitt, Pastor of the First Methodist Church of Mt. Ephraim; Elizabeth B. Paul, Corresponding Secretary of the Women's Society of Christian Service of the Methodist Church of Mt. Ephraim; and George D. Rothermel, representing the Board of Commissioners of the Borough of Mt. Ephraim.

In accordance with Rule 11 of State Regulations No. 1, notification of a hearing to be held upon said objections was sent to the applicant and to the objectors.

At the hearing none of the objectors appeared except Mr. Rothermel, representing the Board of Commissioners of the Borough. There was presented, however, at the hearing two petitions signed by sixty individuals who stated therein that they represented the churches of Mt. Ephraim. These petitions requested the Commissioner of Alcoholic Beverage Control to refuse to grant the license applied for upon the ground that Mt. Ephraim (a community of approximately 3,000 population) already has six retail licensed establishments and that in adjoining municipalities there are five more retail licensed establishments, and also upon the more general ground that any increase in distributing establishments would increase the available supply of beverage alcohol.

At the hearing Mr. Rothermel stated that the Board of Commissioners of the Borough of Mt. Ephraim opposed the issuance of the license because the Board had adopted an ordinance limiting the number of plenary retail consumption licenses to three, with the object of reducing eventually the number of its retail licenses

from six to three, and also because the issuance of the license would create a traffic hazard.

The testimony given at the hearing on behalf of the applicant and the investigation conducted by this Department show that the premises for which the license is sought consists of a one-story frame and stucco building, fronting on the Black Horse Pike approximately 150 feet south of the intersection of the Black Horse Pike and Kings Highway. The building is located in a business district and was erected about twenty-five years ago. It appears to have been used for garage purposes for approximately fifteen years. Thereafter, for a few years, it was used for light manufacturing and has been vacant or used for storage since 1935. The building has been leased by John Burns, Inc. for a period of one year.

The power to issue wholesalers' licenses resides exclusively in the Commissioner of Alcoholic Beverage Control:

"It shall be the duty of the Commissioner to administer the issuance of manufacturers', wholesalers', plenary retail transit, transportation and public warehouse licenses, in accordance with this chapter." (R.S. 33:1-18)

The Alcoholic Beverage Law contains no express provisions to prevent the issuance of the limited wholesale license applied for herein. The governing board or body of the municipality has no power under the provisions of the Alcoholic Beverage Law to restrict the issuance of a wholesaler's license. Where the question relates to the issuance or denial of a wholesaler's license, the Commissioner's power under the Alcoholic Beverage Law to exercise a reasonable discretion appears to be comprehensive. Nonetheless, the Commissioner, in the exercise of his discretion, should and will give serious consideration to reasonable objections of municipal authorities, particularly when the governing body of the municipality has formally opposed the issuance of a wholesaler's license.

It should be pointed out that the issuance of a limited wholesale license would not increase the number of retail outlets in Mt. Ephraim. The holder of a limited wholesale license may sell to retailers and wholesalers licensed under the provisions of the Alcoholic Beverage Law and may sell and distribute without this State to any person pursuant to the laws of such places of sale and distribution. Considering the type and location of the building and the evidence that the applicant intends to operate only two trucks, which will leave early in the morning and return in the evening, I find that there is no substantial evidence that the issuance of the license would create any traffic hazard on the Black Horse Pike.

On the other hand, in view of the formal objection to the issuance of the license by the Borough Commissioners, the opposition of a substantial number of the citizens in the community, and in the absence of any testimony that the applicant may not, without undue hardship, establish his business in a neighboring community where it would be more favorably received, I have reached the conclusion that the application should be denied.

Accordingly, it is, on this 11th day of February, 1944,

ORDERED that the application of John Burns, Inc. for a limited wholesale license be and the same is hereby denied.

ALFRED E. DRISCOLL  
Commissioner.

10. MORAL TURPITUDE - CRIME OF ROBBERY FOUND TO INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS LAST PAST AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION TO LIFT GRANTED.

In the Matter of an Application )  
to Remove Disqualification be- )  
cause of a Conviction, Pursuant )  
to R. S. 33:1-31.2. )

CONCLUSIONS  
AND  
ORDER

Case No. 321.  
----- )

BY THE COMMISSIONER:

Petitioner herein, under and pursuant to the provisions of R. S. 33:1-31.2, seeks to have any statutory disqualification removed that may exist by reason of his having been convicted of a crime.

The record of petitioner discloses that, on May 17, 1933, when he was twenty-one years of age, he pleaded non vult to a charge of conspiracy to rob and was placed on probation for a period of five years and was ordered to pay \$1.00 a week. However, on June 28, 1933, petitioner pleaded non vult to the charge of robbery, as a result of which he was sentenced by a Judge of an adjoining county to an indeterminate term in a reformatory. The conspiracy case was then closed. It appears from the testimony of petitioner that he drove the automobile used by several men in carrying out the robbery and received part of the money that was stolen. Conspiracy to rob and actual robbery are crimes which involve moral turpitude. After serving for a time in the reformatory, petitioner was paroled, on May 8, 1934.

The testimony of the petitioner reveals that he has been assisting in a tavern for a short period of time. When interrogated regarding this, petitioner stated that he did not realize that he was disqualified until one of the local police officers advised him to obtain a ruling from the Commissioner regarding his status. Petitioner stated that he immediately came to the Department of Alcoholic Beverage Control and filed the within petition. Ignorance of the law would not excuse him if this were a criminal or disciplinary proceeding. Knowledge of the law, however, is not a necessary ingredient of the good faith essential in rehabilitation proceedings of this character. Re Case No. 61, Bulletin 338, Item 2. After having carefully studied petitioner's case and his frank admission on the witness stand relative to his employment by a liquor licensee, I conclude that he acted in good faith.

Several witnesses, including a lawyer and two businessmen who have known petitioner for eight or more years, stated that petitioner bears a good reputation in his community and to their knowledge has been a law-abiding citizen.

I am, therefore, satisfied that petitioner has been leading an honest and law-abiding life for at least five years last past and conclude that his association with the alcoholic beverage industry will not be detrimental to the public interest. Hence, his disqualification will be lifted.

Accordingly, it is, on this 16th day of February, 1944,

ORDERED that petitioner's statutory disqualification because of the convictions described herein, be and the same is hereby lifted, in accordance with the provisions of R.S. 33:1-31.2.