

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

BULLETIN 678

SEPTEMBER 13, 1945

1. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR A PERIOD OF 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

LEDA, INC.)
T/a JERRY GERBER'S)
1605-1607 Ocean Avenue)
Asbury Park, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-51, issued by the City Council of the City of Asbury Park.)
-----)

Defendant-licensee, by James P. Smith, President.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant corporation pleads non vult to charges alleging that: (1) on August 2, 1945 it possessed two 4/5 quart bottles of illicit liquor, labeled "Canadian Club Blended Canadian Whiskey" containing alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50; (2) on August 16, 17 and 18, 1945 it sold alcoholic beverages to minors, in violation of R. S. 33:1-77; and (3) on the same dates it sold to and permitted the consumption of alcoholic beverages by minors upon the licensed premises, in violation of Rule 1 of State Regulations No. 20.

As to the first charge: An agent of the Department of Alcoholic Beverage Control, while making a routine inspection, noticed that two bottles bearing the label "Canadian Club Blended Canadian Whiskey" appeared to be off test. The person in charge of the licensed premises admitted that he had filled both bottles with Harwood Whiskey because he was out of Canadian Club and was unable to get any more. Harwood is a more expensive alcoholic beverage than Canadian Club. However, as repeatedly pointed out, a patron is entitled to receive exactly what he orders. Retailers are not permitted to refill bottles.

As to the second and third charges: On the evening of August 17, 1945 two agents of the Department of Alcoholic Beverage Control entered the licensed premises about 11:50 p.m. and observed a number of patrons seated at the oval bar. Many of them appeared to be minors. They further observed tables in the barroom, some of which were occupied. They left the bar and seated themselves near a table where two girls who appeared to be minors were drinking beer. About 12:30 a.m. one of the girls ordered two beers, which were served to them. The agents identified themselves and the girls admitted that they were nineteen years of age and had been in the place at about 11:30 p.m. the evening of the 17th as well as the evening of the 16th, and, on both occasions, had been served several beers. The waitress admitted that she had served them both prior to and after midnight on the 17th and 18th, but stated she had not seen them on the premises prior to that evening.

The defendant states it has discharged both the bartender who filled the order and the waitress who made the service. However, that zeal should have been evinced at a much earlier date.

The licensee has no prior record. I shall, therefore, impose a ten-day suspension on the first charge and a fifteen-day suspension on the second and third charges, with a five-day remission for the plea on the second and third charges, making a net suspension of twenty days.

Accordingly, it is, on this 10th day of September, 1945,

ORDERED, that Plenary Retail Consumption License C-51, issued by the City Council of the City of Asbury Park to Leda, Inc., t/a Jerry Gerber's, for premises 1605-1607 Ocean Avenue, Asbury Park, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. September 18, 1945 and terminating at 2:00 a.m. October 8, 1945.

ALFRED E. DRISCOLL
Commissioner.

2. LIMITATION OF LICENSES - INCREASE IN QUOTA TO PERMIT ISSUANCE OF LICENSE TO AN EX-SERVICEMAN - HEREIN DISCUSSION OF THE PROBLEM.

August 17, 1945

Florence M. Eccles, Acting Town Clerk
Nutley, N. J.

My dear Miss Eccles:

I continue to be of the opinion that, in general, we have too many liquor licenses in this State. Accordingly, my recommendation that municipal issuing authorities refrain from issuing new licenses stands during the license year 1945-46. Please note that this is a recommendation -- not an order. It is, of course, the privilege of a municipal issuing authority to accept the recommendation and adopt it as its policy. A municipality may, however, continue to receive and, in fact, is required by the Alcoholic Beverage Law to consider, applications for licenses and to determine, in the exercise of its best judgment, whether the application should be granted or denied. Where a municipality, as in the case of Nutley, has limited the number of licenses that may be issued and outstanding at the same time, it is bound by its own ordinance. In my opinion, the limitation adopted by your municipality is a wise one and should be retained.

I recognize that the application of a veteran for a liquor license carries a very real appeal; is entitled to sympathetic consideration, and is likely to win support even though there are already a sufficient number of licenses issued and outstanding in the municipality. No one will question the fact that the entire nation owes a very real obligation to our veterans. We want to help them in every way possible. I doubt, however, if we are helping a veteran in the long run by giving him an opportunity to go into an already overcrowded business where there is a better than fair chance that he will lose his investment.

An important point to remember is that liquor licenses are not properly issued to serve individual, private interests. They are issued to serve a public need. If a municipal issuing authority changes its quota ordinance in order to make room for one veteran,

what is it to do when other equally qualified and deserving veterans apply for licenses? If the late-comers are denied, they will certainly consider themselves discriminated against. On the other hand, it would not be in the interest of public welfare to grant licenses to all veterans who apply for the same. In this respect, liquor must be considered as something similar to a utility or other business requiring a franchise. In each of these cases, the individual interest of the applicant must be weighed in the light of the greater public interest.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

3. LIMITATION OF LICENSES - HEREIN FURTHER DISCUSSION OF THE PROBLEM OF THE EX-SERVICEMAN.

August 22, 1945

Joseph L. Sutcliffe
Absecon, N. J.

Dear Mr. Sutcliffe:

I have your letter of August 9th stating that you have purchased the Hollywood Hotel in Absecon for your son when he is released from the army; that you tried to get a liquor license for the young man "thinking the council would not turn him down him being in the service, but they did"; and that the hotel would be an asset to Absecon if you were granted a liquor license.

I am not questioning your good faith in this matter, but from the way your letter reads there would appear to be some doubt that your son is to be the real and only party in interest in the hotel's business.

In any event, retail alcoholic beverage licenses are not issued by the State Commissioner but by the issuing authorities of the various municipalities. The determination to grant or deny a retail license application rests in the first instance with the municipal issuing authority (Revised Statutes 33:1-19), and the municipal action on an application is subject to review by the State Commissioner on appeal pursuant to Revised Statutes 33:1-22. The State Commissioner may not comment upon the merits of a particular pending or contemplated application since the matter may come before him on appeal.

According to this Department's records, the number of plenary retail consumption licenses in Absecon is limited to three (Ordinance adopted by the City's Common Council and approved by the Mayor on November 10, 1942). There are now three such licenses in Absecon and the ordinance prohibits the Common Council from issuing a fourth.

Our serious problem in New Jersey is one of far too many liquor licenses rather than too few. Is it not possible that the Hollywood Hotel might be profitably operated and "an asset to the town of Absecon" without a liquor license?

Person-to-person license transfers are authorized by the Alcoholic Beverage Law and are not prohibited by the City's limitation ordinance. Have you fully investigated the prospects of securing the transfer of one of the three existing licenses?

No one will question the fact that the entire nation is immeasurably indebted to its war veterans. But alcoholic beverage licenses are not properly issuable to serve private, individual interests -- even those of a returning veteran. They are properly issuable only to serve the public need. If a municipal authority changes its quota ordinance in order to make room for one veteran, what is it to do when other equally qualified and deserving veterans apply for licenses? If the late-comers are denied they will certainly consider themselves discriminated against. Should licenses be granted to all veterans who apply, none could make a legitimate profit and the situation would be completely out of control.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

4. RETAIL LICENSES - PARTNERSHIP - PROCEDURE IN EVENT OF DEATH OF PARTNER.

August 31, 1945

Frank M. Lario, Esq.
Camden, N. J.

Dear Mr. Lario:

The Commissioner has referred to me for reply your letter of August 25th regarding license C-3 in Winslow Township issued on July 1, 1945 to the partnership composed of Herman Honsell and Anna Honsell, his wife.

In Re Hafner, Bulletin 20, Item 7, it was ruled that, upon the retirement of a partner, the issuing authority must be immediately notified of the change of ownership, whereupon such change shall be evidenced by endorsing upon the face of the original license:

"This license, subject to the original terms and conditions, is hereby continued in the name of (names of remaining partners), trading as (new trade name)."

The Uniform Partnership Law (R. S. 42:1-31) provides that:

"Dissolution is caused:

1. Without violation of agreement between the partners.
* * *
- b. By the express will of any partner when no definite term or particular undertaking is specified.
* * *
4. By the death of any partner.
* * *"

Hence, it would appear that, so far as the Alcoholic Beverage Law is concerned, the same procedure should be followed upon the death of a partner as upon the voluntary retirement of a partner. This conclusion is strengthened by a decision of the Court of Errors and Appeals in Thomsen v. Riedel, 114 N.J.L. 379, wherein it was held that:

"On the death of a partner, the right to liquidate the affairs of the partnership devolves upon the surviving partner, and he cannot be deprived of such right by the personal representative of the deceased partner in the absence of any mismanagement."

In Kanzler v. Smith, 123 N. J. Eq. 602, it was held that a surviving partner, upon the death of the other partner, has a duty to liquidate partnership assets and pay deceased partner's legal representative proper share of net proceeds in absence of any contrary provision in articles of agreement.

Accordingly, the Department has ruled that, on the death of a partner, the same procedure should be followed as upon the voluntary retirement of a partner. Re Turi, Bulletin 232, Item 7.

Thus, the answer to your inquiries are as follows:

- (1) Mrs. Honsell is authorized to operate under the privileges conferred by License C-3 and, hence, no special permit is necessary from this Department;
- (2) the executor need not apply for an extension of the license to include his name thereon;
- and (3) no transfer is necessary to vest the license in Mrs. Honsell individually since, upon endorsement to show the death of Mr. Honsell, it will automatically be in her name alone.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

By: Richard C. Gossweiler
Attorney.

5. DISCIPLINARY PROCEEDINGS - APPLICATION FOR STAY OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against)
)
 JOSEPH J. FERRUCCI)
 T/a CIRCLE MARKET)
 Route 6)
 Netcong, N. J.,)
)
 Holder of Plenary Retail Distribution License D-4 for the present fiscal year, issued by the Common Council of the Borough of Netcong, and transferred to)
)
 ALBERT FERRUCCI and)
 JOSEPH FERRUCCI,)
)
 for the same premises.)
 -----)

O R D E R

On August 6, 1945 an Order was entered by the State Commissioner of Alcoholic Beverage Control suspending the plenary retail distribution license held by Joseph J. Ferrucci for premises on Route 6, Netcong, for the balance of the present licensing year, effective as of August 13, 1945, upon his non vult plea to charges alleging that his father and mother held undisclosed interests in the license nominally issued to him. See Bulletin 677, Item 5. The Order further provided that when the unlawful "front" situation was corrected, a petition to lift the suspension would be entertained, but that no relief would be granted prior to the expiration of sixty days from the effective date of the suspension.

Since the entry of said Order, the license has been transferred to a partnership consisting of Albert Ferrucci and Joseph Ferrucci, father and son respectively.

Application has now been made for a lifting of the suspension prior to the expiration of the aforesaid sixty-day period. Since there appears, prima facie, to be merit in the application, the suspension will be temporarily held in abeyance pending consideration and final determination of the extent of the penalty warranted by the circumstances surrounding the violation herein.

Accordingly, it is, on this 28th day of August, 1945,

ORDERED, that the suspension for the balance of the term imposed against Plenary Retail Distribution License D-4, formerly held by Joseph J. Ferrucci, t/a Circle Market, for premises on Route 6, Netcong, and subsequently transferred to Albert Ferrucci and Joseph Ferrucci for the same premises, be and the same is hereby lifted, effective immediately, for a temporary period, pending further consideration of the application made to lift the suspension heretofore imposed as aforesaid, and subject to any further order of suspension to be entered by the State Commissioner of Alcoholic Beverage Control upon such further consideration of said application.

ALFRED E. DRISCOLL
Commissioner.

By: Erwin B. Hock
Deputy Commissioner.

6. DISCIPLINARY PROCEEDINGS -- ILLICIT LIQUOR -- PREVIOUS RECORD -- LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against)

FRANK VEZZETTI)
T/a MADISON HOTEL)
1316-1318 Washington Street)
Hoboken, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-11 issued by the Board of Commissioners of the City of Hoboken.)

Winne & Banta, Esqs., by Walter G. Winne, Esq., Attorneys 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 he possessed one 4/5 quart bottle labeled "Carstairs White Seal Blended Whiskey" and one 4/5 quart bottle labeled "Imperial Hiram Walker's Blended Whiskey", the contents thereof not being genuine as labeled, in violation of R. S. 33:1-50.

During an inspection of the defendant's open stock of liquor on his licensed premises on July 4, 1945, an inspector of the Federal Alcohol Tax Unit seized five bottles of whiskey when a preliminary test thereof indicated that the liquor was not genuine as labeled. Subsequent analysis of the contents of the bottles in question by a Federal chemist revealed that the two above described bottles contained whiskey different in its characteristics from the whiskey named on the labels.

Regardless of the reason for this difference, the licensee is absolutely responsible for the bona fides of his liquor stock. Cf. Re Kurian, Bulletin 517, Item 2.

The minimum suspension imposed on a licensee for "refill" violations is ten days. This, however, only applies when there is no prior record of violations and no aggravating circumstances. Re Klimovich, Bulletin 667, Item 1. In the instant case the licensee in 1943 was found guilty of selling alcoholic beverages during prohibited hours, in violation of a local ordinance. Under this circumstance I shall suspend his license for fifteen days.

Accordingly, it is, on this 10th day of September, 1945,

ORDERED, that Plenary Retail Consumption License C-11, issued by the Board of Commissioners of the City of Hoboken to Frank Vezzetti, t/a Madison Hotel, for premises 1316-1318 Washington Street, Hoboken, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. September 17, 1945 and terminating at 2:00 a.m. October 2, 1945.

ALFRED E. DRISCOLL
Commissioner.

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.

In the Matter of Disciplinary Proceedings against)

JADWIGA BORKOWSKI)
313 Cross Street)
Harrison, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-15 issued by the Town Council of the Town of Harrison.)
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Rospond and Rospond, Esqs., by J. Thaddeus Rospond, Esq., Attorneys for Defendant-licensee.

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

BY THE COMMISSIONER:

Defendant pleaded non vult to a charge alleging that, in violation of R. S. 33:1-50, she possessed three 4/5 quart bottles, namely, a bottle of Lansdowne Reserve Blended Whiskey, a bottle of Wilson "That's All" Blended Whiskey and a bottle of Calvert Special Blended Whiskey, the contents of all of which contained alcoholic beverages not genuine as labeled.

On June 18, 1945 an A.T.U. agent tested sixteen open bottles of liquor at the above tavern and seized the above three bottles, together with three other bottles which appeared to be off in color and to vary in proof. An analysis determined, however, that such was not the case as to the latter three bottles.

The licensee denied tampering with the bottles. However, as repeatedly pointed out, this is no excuse. Defendant has no previous record. I shall, therefore, suspend her license for a period of ten days. See Re Raffa, Bulletin 619, Item 1.

Accordingly, it is, on this 10th day of September, 1945,

ORDERED, that Plenary Retail Consumption License C-15, issued by the Town Council of the Town of Harrison to Jadwiga Borkowski, for premises 313 Cross Street, Harrison, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. September 17, 1945, and terminating at 2:00 a.m. September 27, 1945.

ALFRED E. DRISCOLL
Commissioner.

8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR A PERIOD OF 45 DAYS.

HEREIN WARNING THAT IN FUTURE CASES PENALTY IN ILLICIT LIQUOR CASES MAY BE INCREASED.

In the Matter of Disciplinary Proceedings against)

GREGORY CAPPUCCINO)
423 Third Street)
East Newark, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-13, issued by the Borough Council of the Borough of East Newark.)
-----)

William C. Egan, Esq., Attorney for Defendant-licensee.)
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.)

BY THE COMMISSIONER:

The defendant has pleaded non vult to a charge alleging that he possessed eight bottles of assorted alcoholic beverages, all of which contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

While the defendant professes a complete lack of knowledge concerning any tampering with the bottles in question and asserts that any attempted explanation would be "merely conjecture" on his part, it is a curious fact that, of the defendant's entire open stock of twenty-eight bottles possessed by him on June 11, 1945, all of the eight bottles seized by the Federal ATU agent represent the better known brands of liquor.

I had occasion, about a year ago, to set forth my position with respect to this type of "fraud upon the public." See Re Brooks, Bulletin 633, Item 11, where a thirty-day penalty was given for the same number of refilled bottles as is involved in this case. I there unequivocally stated:

"The record of this state in suppressing the practice of 'refilling' compares most favorably with that of all the other states of this Union -- and I mean to keep it so. The influx into the present market, and the consequent availability, of whiskey manufactured with cane and fruit spirits, has presented a great temptation to unscrupulous licensees to palm off this whiskey on an unsuspecting public. If this practice assumes any more serious proportions than it has to date, I give fair warning to all licensees that the penalty for this type of violation will be increased to a standard that will virtually insure its complete elimination."

My warning has apparently gone unheeded. The number of refilled liquor cases has recently taken a serious upturn and has reached a point where, "unless stopped, may lead to a complete breakdown of proper liquor control." See Re Mitchell, Bulletin 665, Item 8. This was the reason for my recently imposing a sixty-day penalty in a case where sixteen bottles of such illicit liquor were found. See Re Rulli, Bulletin 677, Item 9.

The suspension herein will be fixed at a period of forty-five days.

Accordingly, it is, on this 10th day of September, 1945,

ORDERED, that Plenary Retail Consumption License C-13, issued by the Borough Council of the Borough of East Newark to Gregory Cappuccino, for premises 423 Third Street, East Newark, be and the same is hereby suspended for a period of forty-five (45) days, commencing at 2:00 a.m. September 14, 1945, and terminating at 2:00 a.m. October 29, 1945.

ALFRED E. DRISCOLL
Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

LUKAS CHYLA
70 Wallington Avenue
Wallington, N. J.,

Holder of Plenary Retail Consumption License C-18, issued by the Borough Council of the Borough of Wallington.

CONCLUSIONS
AND ORDER

Lukas Chyla, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant has pleaded non vult to a charge alleging the sale and delivery of alcoholic beverages for consumption off the licensed premises, in violation of Rule 1 of State Regulations No. 38.

On Friday, August 3, 1945, at about 10:30 p.m., or thirty minutes after the curfew hour for sales of liquor in original containers for consumption off the licensed premises, the defendant sold an ABC agent two quart bottles of beer, which were placed in a paper bag.

The defendant explains that he arrived at his tavern shortly before the sale was made and failed to note the time.

Since no aggravating circumstances appear, and the defendant has no previous record, I shall impose the normal fifteen-day penalty, with remission of five days for the plea, leaving a net suspension of ten days.

Accordingly, it is, on this 10th day of September, 1945,

ORDERED, that Plenary Retail Consumption License C-18, issued by the Borough Council of the Borough of Wallington to Lukas Chyla, for premises 70 Wallington Avenue, Wallington, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. September 17, 1945, and terminating at 3:00 a.m. September 27, 1945.

ALFRED E. DRISCOLL
Commissioner.

10. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JOHN VanHARKEN)
541 Union Avenue)
Paterson 2, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-74 issued by the Board of Alcoholic Beverage Control of the City of Paterson.)
- - - - -)

Donald G. Collester, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant has pleaded non vult to a charge alleging the sale of alcoholic beverages for consumption off the licensed premises, in violation of Rule 1 of State Regulations No. 38.

On Tuesday evening, July 31, 1945, two ABC agents observed the sale at the premises in question of a bottle of beer at 10:10 p.m. and also a bottle of wine at 10:30 p.m. Shortly thereafter the agents purchased two quart bottles of beer, which were wrapped in a newspaper by the bartender.

The fact that the bartender acted contrary to express instructions while the defendant was absent from the licensed premises presents no defense to the violation. A licensee is responsible for all violations committed on the licensed premises by his employees.

Since the defendant's record is otherwise clear, and the instant offense does not appear to be an aggravated one, the usual fifteen-day penalty will be imposed. For the guilty plea, a five-day remission will be given, leaving a net penalty of ten days.

Accordingly, it is, on this 10th day of September, 1945,

ORDERED, that Plenary Retail Consumption License C-74, issued by the Board of Alcoholic Beverage Control of the City of Paterson to John VanHarken, for premises 541 Union Avenue, Paterson, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. September 17, 1945, and terminating at 3:00 a.m. September 27, 1945.

ALFRED E. DRISCOLL
Commissioner.

11.

ACTIVITY REPORT FOR AUGUST, 1945

To: Alfred E. Driscoll, Commissioner

ARRESTS:	Licensees and employees - - - - -	3	Bootleggers - - - - -	14	
	Total number of persons arrested- - - - -				17
SEIZURES:	Stillis - 1 to 50 gallons daily capacity- - - - -			0	
	50 gallons and more daily capacity - - - - -			2	
	Total number of stills seized- - - - -				2
	Mash - gallons - - - - -				0
	Motor vehicles - Trucks- - - - -			1	
	Passenger cars- - - - -			3	
	Total number of motor vehicles seized- - - - -				4
	Alcohol - gallons- - - - -				40
	Brewed malt alcoholic beverages (beer, ale, etc.) - gallons- - - - -				211
	Wine - gallons - - - - -				8
	Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons- - - - -				63.50
RETAIL LICENSEES:	Total number of premises inspected - - - - -				1,125
	Total number of bottles gauged - - - - -				15,845
	Total number of premises where violations were found - - - - -				116
	Total number of violations found - - - - -				207
	Type of violations found:				
	Illicit liquor - - - - -	49	Improper beer tap markers - - - - -	8	
	Gambling devices - - - - -	45	Stock disposal permits necessary- - - - -	11	
	Prohibited signs - - - - -	1	No sign denoting legal sale hours - - - - -		
	Unqualified employees- - - - -	58	off-premises consumption- - - - -	29	
	"Fronts" (concealed ownership) - - - - -	3	Other types of violations - - - - -	3	
MILITARY AREA PATROL INSPECTIONS:					220
STATE LICENSEES:	Premises inspected - - - - -				7
	License applications investigated- - - - -				22
COMPLAINTS:	Investigated, reviewed and closed- - - - -				254
	Investigation assigned, not yet completed- - - - -				195
LABORATORY:	Analyses made- - - - -				161
	"Shake-up" cases (alcohol, water and artificial coloring)- - - - -				14
	Liquor found to be not genuine as labeled- - - - -				37
IDENTIFICATION BUREAU:	Criminal fingerprint identifications made- - - - -				20
	Persons fingerprinted for non-criminal purposes- - - - -				242
	Identification contacts with other enforcement agencies- - - - -				268
	Motor vehicle identifications via N. J. State Police Teletype - - - - -				2
DISCIPLINARY PROCEEDINGS INSTITUTED:	Cases transmitted to municipalities- - - - -				19
	Violations involved:				
	Sale during prohibited hours - 6		Unqualified employees - - - - -	3	
	Sale to minors - - - - -	5	Brawls- - - - -	1	
	Bookmaking on premises - - - - -	2	Noise - - - - -	1	
	Sale to non-members by clubs- 2		Sale to intoxicated persons - - - - -	1	
	Service to women at bar- - - - -	2	Slot machines on premises - - - - -	1	
	Cases instituted by Department - - - - -				20
	Violations involved:				
	Fraud and Front- - - - -	6	Bookmaking on premises- - - - -	1	
	Illicit liquor - - - - -	4	Improper bottling by retailer - - - - -	1	
	Sale to minors - - - - -	4	Purchase from improper source - - - - -	1	
	Sale during prohibited hours - 3		Sale under Fair Trade price - - - - -	1	
	Slot machines on premises- - 2		Sale outside scope of license - - - - -	1	
	Unqualified employees- - - - -	2			
	Cases brought by municipalities on own initiative and reported to Department- - - - -				10
	Violations involved:				
	Sale to minors- - - - -	5	Noise - - - - -	2	
	Brawls- - - - -	2	Gambling (cards) on premises- - - - -	1	
	Cancellation proceedings instituted by Department - - - - -				1
	Violation involved:				
	Issuance of license to non resident				
HEARINGS HELD AT DEPARTMENT:	Total number of hearings held - - - - -				34
	Appeals - - - - -	4	Eligibility- - - - -	12	
	Disciplinary proceedings- - - - -	16	Seizures - - - - -	2	
PERMITS ISSUED:	Total number of permits issued- - - - -				947
	Unqualified employees - - - - -				295
	Solicitors- - - - -				99
	Social affairs- - - - -				247
	Home manufacture of wine- - - - -				17
	Disposal of alcoholic beverages - - - - -				199
	Miscellaneous permits - - - - -				90

Respectfully submitted,

ERWIN B. HOCK
Deputy Commissioner

- 12. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF MUNICIPAL REGULATION - FAILURE TO HAVE PREMISES OPEN TO PUBLIC VIEW, IN VIOLATION OF MUNICIPAL REGULATION - EMPLOYING A FEMALE BARTENDER, IN VIOLATION OF MUNICIPAL REGULATION - PREVIOUS RECORD - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR A PERIOD OF 80 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

A. J. S. Corporation)
 156 Broadway)
 Paterson, N. J.,)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consumption License C-358 issued by the Board of Alcoholic Beverage Control of the City of Paterson.)
 -----)

Charles Turndorf, Esq., Attorney for Defendant-licensee.
 Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant corporation pleads non vult to charges alleging that (1) on July 25, 1945 it sold and served alcoholic beverages after 3:00 a.m., in violation of Section 2 of a resolution adopted on June 28, 1935 by the Board of Aldermen of the City of Paterson, which prohibits such activity between 3:00 a.m. and 7:00 a.m.; (2) on said date it failed to keep the entire interior of the licensed premises open to public view, in violation of Section 4 of the aforesaid resolution; and (3) on June 6, 7, 8, 9, 10 and July 25, 1945 it employed a female bartender, in violation of Section 7 of the aforesaid resolution.

At about 2:00 a.m. on July 25, 1945, agents of the Department of Alcoholic Beverage Control arrived in the vicinity of the licensed premises, having observed operation of the place the day before. About 3:00 a.m. the lights were put out and they observed Ann Maslanek (later identified as the bartender) leave the premises after locking the front door. At about 3:12 a.m. she returned, unlocked the front door, entered the licensed premises and turned on some of the lights. Shortly thereafter, patrons began arriving. At 3:35 a.m. one of the agents tried the front door and found it locked. He knocked and the door was opened by a person, later identified as the manager, who apparently was acting as the doorman. The agent entered and found about sixteen patrons at the bar, all drinking whiskey. He went to the bar, which was being tended by Ann Maslanek, and ordered a drink, which was served to him. Shortly thereafter a second agent entered in the same manner as the first, went to the bar and also purchased a drink of whiskey. Patrons kept coming and going until about 3:50 a.m., when the agents identified themselves. At that time there were about eighteen patrons in the place.

The venetian blinds were closed, obstructing the view from the outside. Ann Maslanek admitted that she was employed as a bartender at \$35.00 a week plus a division of the profits for acting as Secretary-Treasurer of the corporation. She likewise admitted that on the other evenings in question she had acted as bartender, but later claimed that she did not know it was against the local regulations to do so.

This has all the earmarks of an "old-fashioned speakeasy." In Re Miles, Bulletin 673, Item 8, I stated that, in future "hours" cases of the "speakeasy" type, the minimum penalty would be thirty days. There are no extenuating circumstances in this case. Furthermore, the defendant has a prior record. On November 9, 1942 the Paterson local Board suspended defendant's license for five days for an "after hours" charge. There is grave doubt in my mind whether this defendant and its officers and employees should be permitted to continue in a privileged business. Under all the circumstances of this case I shall suspend the license for a period of eighty days, less five for the plea, making a net suspension of seventy-five days.

Accordingly, it is, on this 10th day of September, 1945,

ORDERED, that Plenary Retail Consumption License C-358, issued by the Board of Alcoholic Beverage Control of the City of Paterson to A.J.S. Corporation for premises 156 Broadway, Paterson, be and the same is hereby suspended for a period of seventy-five (75) days, commencing at 3:00 a.m. September 17, 1945, and terminating at 3:00 a.m. December 1, 1945.

ALFRED E. DRISCOLL
Commissioner.

13. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - AGGRAVATING CIRCUMSTANCES - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 70 DAYS.

In the Matter of Disciplinary Proceedings against

MAX GUTT
351 Prospect Street
Perth Amboy, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-13 for the fiscal years 1944-45 and 1945-46, issued by the Board of Commissioners of the City of Perth Amboy.

Max Gutt, Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., appearing for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant has pleaded non vult to a charge alleging that he possessed sixteen bottles of assorted alcoholic beverages, all of which contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

On May 21, 1945, a Federal ATU agent tested the defendant's open stock of forty bottles of liquor. He seized the sixteen bottles in question, all of which, upon chemical analysis, were certified by the Federal chemist "to have been refilled."

The defendant admits that "I did refill the bottles with _____ whiskey because of a shortage of popular brands in my stock."

In the recent case of Re Rulli, Bulletin 677, Item 9, the same number of refills, representing 60% of that licensee's open stock, was involved. The penalty there imposed was a suspension for a period of sixty days. Here the proportion of refills to the defendant's entire open stock amounts to 40%.

There is no rule of thumb by which the exact penalty to be inflicted in this type of case may be definitively admeasured. The ratio of refilled bottles to open stock is important only in determining the ultimate test, to wit, the extent of the fraud practiced by the defendant upon the public. Whether sixteen bottles, all comprising fast-selling items, represent 40% or 60% of a licensee's open stock, would appear to be immaterial in a determination of the appropriate penalty. In either case the fraud is substantial and warrants similarly severe treatment.

The defendant's previous record includes his arrest in March, 1934 on a charge of possession of untaxed liquor, which was subsequently converted to a disorderly person charge and the defendant fined the sum of \$100.00 by the local police magistrate. In July 1943 the defendant's license was suspended for a period of ten days upon a charge alleging that he was the undisclosed owner of a license which had theretofore been nominally issued to his daughter. See Bulletin 579, Item 3.

A consideration of all the circumstances leads to the imposition of a seventy-day penalty.

Accordingly, it is, on this 10th day of September, 1945,

ORDERED, that Plenary Retail Consumption License C-13, issued for the current fiscal year by the Board of Commissioners of the City of Perth Amboy to Max Gutt, for premises 351 Prospect Street, Perth Amboy, be and the same is hereby suspended for a period of seventy (70) days, commencing at 2:00 a.m. September 14, 1945, and terminating at 2:00 a.m. November 23, 1945.

ALFRED E. DRISCOLL
Commissioner.

- 14. AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - SALE OF ALCOHOLIC BEVERAGES TO A MINOR - LICENSEE PAID FINE OF \$250.00 - LICENSE SUSPENDED FOR A PERIOD OF 5 DAYS BY LOCAL EXCISE BOARD - APPLICATION TO LIFT GRANTED UPON TERMINATION OF ADDITIONAL 5 DAYS' SUSPENSION.

In the Matter of a Petition by)
VIOLA and STANLEY ROGALSKI)
225 Springfield Ave.)
Newark, N. J.,)

ON PETITION
CONCLUSIONS AND ORDER

To Lift the Automatic Suspension)
of Plenary Retail Consumption)
License C-695 issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)

Robert W. Wolfe, Esq., Attorney for Petitioners.

BY THE COMMISSIONER:

It appears from the petition that on August 21, 1945, Stanley Rogalski, one of the petitioners herein, pleaded non vult in the Court of Quarter Sessions of Essex County to an indictment alleging that he had sold alcoholic beverages to a minor, in violation of

R. S. 33:1-77. Subsequently he was sentenced to pay a fine of \$250.00 and was placed on probation for a period of three years. On September 7, 1945 agents of the Department of Alcoholic Beverage Control picked up the license held by the petitioners and no business has been conducted thereunder since that time.

It further appears from the records of the Department of Alcoholic Beverage Control that, on February 15, 1945, the Municipal Board of Alcoholic Beverage Control of the City of Newark suspended the license then held by petitioners for a period of five days, effective February 26, 1945, after they had pleaded guilty in disciplinary proceedings to charges alleging that they had sold alcoholic beverages to a minor, in violation of Rule 1 of State Regulations No. 20 and R. S. 33:1-77.

The indictment in the criminal proceedings and the charges in the disciplinary proceedings were based upon the same facts. Since Stanley Rogalski was a partner in the business conducted by petitioners, his conviction in the criminal proceedings has resulted in an automatic suspension of the license for the balance of its term. R. S. 33:1-31.1. The petition herein prays that the automatic suspension of the license may be lifted.

In my opinion, the penalty imposed in the disciplinary proceedings was inadequate. The girl to whom the sales of alcoholic beverages were made was only seventeen years of age, and I believe that a suspension for a period of at least fifteen days, with five days remitted for the guilty plea, should have been imposed. The purpose of the automatic suspension is to insure that, when a licensee is convicted in a criminal court, there is swift and sure penalty against the license. In view of such purpose, it has been the policy to lift a 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 Solitare, Bulletin 538, Item 4. The automatic suspension has been in effect since September 7, 1945 and, allowing for the five days served under the suspension imposed by the Municipal Board, a total suspension of ten days will have been served on September 12, 1945. I shall not lift the automatic suspension until 7:00 a.m. September 12, 1945.

Accordingly, it is, on this 11th day of September, 1945,

ORDERED, that the automatic suspension of the license aforesaid be lifted, effective at 7:00 a.m. September 12, 1945. Until then the license stands suspended.

ALFRED E. DRISCOLL
Commissioner.

15. DISCIPLINARY PROCEEDINGS - PURCHASE OF ALCOHOLIC BEVERAGES BY RETAIL LICENSEE OTHER THAN FROM A NEW JERSEY MANUFACTURER OR WHOLESALER, IN VIOLATION OF RULE 15 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR A PERIOD OF 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

PHIL BOVINO)
21 Clifton Avenue)
Newark, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-583, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
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Giuliano & Giuliano, Esqs., by Anthony Giuliano, Esq.,
Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to a charge alleging that, on or about July 26, 1945, he purchased alcoholic beverages from a person who was not the holder of a New Jersey manufacturer's or wholesaler's license, in violation of Rule 15 of State Regulations No. 20.

The departmental file discloses that defendant purchased ten cases of beer that had been stolen or misappropriated by an employee of a State Beverage Distributor licensee. Defendant admitted in a signed statement given to the ABC agents that he was aware that the truck driver "had no right to sell me the beer."

Defendant, who has operated a licensed premises since April 1940, has no previous adjudicated record. Under the circumstances, I shall suspend defendant's license for a period of sixty days, less a remission of five days for the plea entered herein, or a net suspension of fifty-five days. Cf. Re Mylor, Bulletin 535, Item 6.

Defendant has been arrested on a charge of receiving stolen goods. These criminal proceedings are now pending. If the defendant is convicted of receiving stolen goods, which crime ordinarily involves moral turpitude, it may well be that he will thereby become disqualified from being associated with the alcoholic beverage industry. See R. S. 33:1-25. However, that question must await determination of the criminal proceedings.

Accordingly, it is, on this 12th day of September, 1945,

ORDERED, that Plenary Retail Consumption License C-583, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Phil Bovino, for premises 21 Clifton Avenue, Newark, be and the same is hereby suspended for a period of fifty-five (55) days, commencing at 2:00 a.m. September 18, 1945, and terminating at 2:00 a.m. November 12, 1945.

Alfred E. Driscoll
Commissioner.