

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

BULLETIN 780

OCTOBER 23, 1947.

TABLE OF CONTENTS

- ITEM
1. DISCIPLINARY PROCEEDINGS (Passaic) - CLUB LICENSEE - FALSE ANSWER IN LICENSE APPLICATION - SALE TO NON-MEMBERS.
CANCELLATION PROCEEDINGS (Passaic) - CLUB LICENSEE DID NOT HAVE EXCLUSIVE CONTINUOUS POSSESSION FOR THREE YEARS PRIOR TO APPLICATION FOR LICENSE - LICENSE ORDERED CANCELLED.
 2. DISCIPLINARY PROCEEDINGS (Randolph Township) - LICENSE ISSUED TO PARTNERSHIP ALTHOUGH APPLICATION REVEALED ONE PARTNER WAS AN ALIEN - SITUATION CORRECTED - ORDER TO SHOW CAUSE DISMISSED.
 3. DISCIPLINARY PROCEEDINGS (Dover Township) - CHARGES OF FALSE ANSWER IN APPLICATION AND AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE DISMISSED - CHARGE OF FAILING TO DISCLOSE CONDITIONAL BILL OF SALE DISMISSED - DEPARTMENT FAILED TO SUSTAIN BURDEN OF PROOF.
 4. LICENSED PREMISES - "ALL STARS" MACHINE, A MINIATURE BASEBALL GAME, PERMISSIBLE UNDER CONDITIONS SET FORTH HEREIN.
 5. DISCIPLINARY PROCEEDINGS (Newark) - APPLICATION FOR WRIT OF CERTIORARI HAVING BEEN ABANDONED, ORDER ENTERED FIXING EFFECTIVE DATES OF SUSPENSION.
 6. DISCIPLINARY PROCEEDINGS (Orange) - FALSE STATEMENT IN LICENSE APPLICATION - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
 7. RECAPITULATION OF ACTIVITY FOR QUARTERLY PERIOD FROM JULY 1, 1947 THROUGH SEPTEMBER 30, 1947.
 8. DISCIPLINARY PROCEEDINGS (Closter) - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
 9. DISCIPLINARY PROCEEDINGS (Wantage Township) - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
 10. APPELLATE DECISIONS - FOGELSON v. MONTVILLE.
 11. DISCIPLINARY PROCEEDINGS (Jefferson Township) - "FRONT" - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF LICENSE - FALSE STATEMENT AS TO EXTENT OF LICENSED PREMISES - VIOLATION OF R. S. 35:1-34 - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO APPLY FOR LIFTING SUSPENSION AFTER 45 DAYS UPON CORRECTION OF ILLEGAL SITUATION.
 12. DISCIPLINARY PROCEEDINGS (Trenton) - SOLICITOR'S PERMIT REVOKED, DESPITE SURRENDER, FOR VIOLATIONS COMMITTED WHILE HOLDER OF STATE BEVERAGE DISTRIBUTOR'S LICENSE.
 13. DISCIPLINARY PROCEEDINGS (Paterson) - SALE TO MINORS - LICENSE SUSPENDED FOR 10 DAYS.
 14. STATE LICENSES - NEW APPLICATIONS FILED.
 15. FAIR TRADE - NOTICE OF COMPLETE PUBLICATION.

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OCTOBER 23, 1947.

1. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - FALSE ANSWER IN LICENSE APPLICATION - SALE TO NON-MEMBERS.

CANCELLATION PROCEEDINGS - CLUB LICENSEE DID NOT HAVE EXCLUSIVE CONTINUOUS POSSESSION FOR THREE YEARS PRIOR TO APPLICATION FOR LICENSE - LICENSE ORDERED CANCELLED.

In the Matter of Disciplinary Proceedings against

TWELVE ACES SOCIAL CLUB
289 Oak Street
Passaic, N. J.,

CONCLUSIONS
AND ORDER

Holder of Club License CB-17 for the licensing years 1946-1947 and 1947-1948, issued by the Board of Commissioners of the City of Passaic.

Joseph J. Weinberger, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded not guilty to a charge alleging that it falsely stated in its license application that it had been in exclusive continuous possession and use of club quarters for three years prior to submitting such application, and pleaded guilty to a charge alleging the sale of alcoholic beverages to non-members of its club.

In addition, the defendant was called upon to show cause why its license should not be cancelled for the reason that it was issued contrary to Rule 4 of State Regulations No. 7, which provides that "no license shall be issued to any club unless it shall have been in exclusive continuous possession and use of a club house or club quarters for at least three years continuously immediately prior to the submission of its application for a license."

Although the record contains conflicting evidence on the contested issue, it is clear from the written statements of the president, treasurer, and the secretary of the defendant organization, all of which were marked in evidence, that throughout the years 1942, 1943, 1944, and until March 1945 when its present quarters were obtained, its meetings were held at the homes of various of the club members. It is apparent that the test of the cited rule has not been met and that the defendant was not qualified to receive its license for the licensing year 1946-1947 nor its renewal thereof for the current licensing year. Cf. Progressive Democratic Club, Bulletin 672, Item 3; North Camden Civic Club, Bulletin 705, Item 13, where no penalty was imposed on the charge and each case resulted in a cancellation of the license. The same disposition will be made herein.

Accordingly, it is, on this 2nd day of October, 1947,

ORDERED that Club License CB-17, issued by the Board of Commissioners of the City of Passaic to the Twelve Aces Social Club for premises 289 Oak Street, Passaic, be and the same is hereby cancelled and declared null and void, effective 3:00 a.m. October 6, 1947.

ERWIN B. HOCK
Commissioner.

2. DISCIPLINARY PROCEEDINGS - LICENSE ISSUED TO PARTNERSHIP ALTHOUGH APPLICATION REVEALED ONE PARTNER WAS AN ALIEN - SITUATION CORRECTED - ORDER TO SHOW CAUSE DISMISSED.

In the Matter of Disciplinary Proceedings against)

SAMUEL H. SAINS & ANNA HORWITZ)
T/a SAIN'S HOTEL BAR & GRILL)
Brookside Road)
Randolph Township)
P.O. Mt. Freedom, N. J.,)

Holders of Plenary Retail Consumption License C-15 for the licensing year 1946-1947, and)

CONCLUSIONS AND ORDER

SAMUEL H. SAINS,)
T/a SAIN'S HOTEL BAR & GRILL,)

Holder of Plenary Retail Consumption License C-15 for the current licensing year for the same premises, both issued by the Township Committee of Randolph Township.)

-----)
Meehan Brothers, Esqs., by John J. Meehan, Esq., Attorneys for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Notice was served upon the defendants calling upon them to show cause why their plenary retail consumption license should not be cancelled, suspended or revoked, for the reason that Anna Horwitz is an alien and, therefore, their license was improvidently issued, contrary to the provisions of R. S. 33:1-25.

In their application filed with the issuing authority upon which their license for the licensing year expiring June 30, 1947 was issued, it was therein disclosed that Anna Horwitz, one of the defendants, is an alien. Under R. S. 33:1-25 no license may be issued to an alien.

It appears that the issuance of the license was due to inadvertence on the part of the issuing authority, and that neither of the defendants acted other than in good faith when submitting their application. When the situation was called to their attention, Anna Horwitz forthwith sold all her interest in the license and business conducted thereunder to the other defendant, Samuel H. Sains, and the license for the current licensing year was issued solely in his name. Under all the circumstances of this case, I shall deem the prior unlawful situation fully corrected and, in accordance with the disposition heretofore made in cases of a similar character, I shall dismiss the instant proceedings. Cf. Martinek, Bulletin 347, Item 1.

Accordingly, it is, on this 3rd day of October, 1947,

ORDERED that the proceedings herein be and the same are hereby dismissed.

ERWIN B. HOCK
Commissioner.

3. DISCIPLINARY PROCEEDINGS - CHARGES OF FALSE ANSWER IN APPLICATION AND AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE DISMISSED - CHARGE OF FAILING TO DISCLOSE CONDITIONAL BILL OF SALE DISMISSED - DEPARTMENT FAILED TO SUSTAIN BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against)

DORATHY TOWNS STRITTMATTER)
T/a TOWN TAVERN)
9 Hyers Street)
Dover Township)
P.O. Toms River, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-12 for the fiscal years 1946-47 and 1947-48, issued by the Township Committee of the Township of Dover.)
-----)

Robert J. Novins, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads not guilty to charges alleging that (1) in violation of R. S. 33:1-25, she falsely stated in her application for her 1946-47 license that no person other than herself was interested in the license, thus concealing the interest of Ellis E. Strittmatter in the license and the business conducted thereunder; (2) in violation of R. S. 33:1-52, she knowingly aided and abetted the said Ellis E. Strittmatter to exercise the rights and privileges of her successive licenses between May 25, 1945 and the date upon which the charges were filed; and (3) in violation of R. S. 33:1-25, she falsely denied that there was a conditional bill of sale on any of the fixtures or equipment used, or to be used, in connection with the conduct of the alcoholic beverage business to be operated under the license applied for, whereas in truth and fact William Ackers and Company held an unpaid conditional bill of sale for the bar and other fixtures in her premises.

Charges (1) and (2) aforementioned were predicated on written statements given to an ABC investigator by the licensee Dorothy Towns Strittmatter and her husband Ellis E. Strittmatter, respectively. Charge (3) was based upon a certain document purporting to be a conditional sales contract, which said agreement was filed on September 26, 1945, in the office of the County Clerk of Ocean County.

As to Charges (1) and (2): The licensee testified that, although the bank account from which the money was withdrawn for use as a partial payment for the purchase of the licensed business was in the name of her husband, Ellis E. Strittmatter, the money belonged to her. Her explanation of this was that she had a sum of money at the time of her marriage, received money from her father as a wedding present, and that she had been employed during her marriage, as a result of which she had accumulated the money in question. The licensee testified that she had neglected to open a business account in the bank until July 1946 due to her husband's illness. The licensee further testified that she purchased the business in May 1945; that the lease and insurance policies are in her name, and that she alone transacted all business at the licensed premises.

Ellis E. Strittmatter, who appears to be qualified in all respects to be associated with the alcoholic beverage industry, corroborated the licensee's testimony that the money used to purchase the business belonged to his wife. He explained that he has a responsible position with a large corporation and that he does not participate, financially or otherwise, in the licensed business being conducted by his wife.

As to Charge (3): The licensee stated that the fixtures and equipment mentioned in an agreement in the nature of a conditional sales contract were defective and that she returned these fixtures and other equipment to the seller before she made application for her 1946-47 license. She further stated that it was her belief that the return of the merchandise terminated the transaction.

The allegations set forth in the charges and borne out by the written statements of the licensee and her husband, Ellis E. Strittmatter, would, if unexplained, arouse suspicion of the existence of the illegal situation. I have concluded, however, that the explanation given at the time of the within hearing by the licensee and her husband is sufficient to allay any doubts as to the bona fides of the purchase and operation of the business. I shall also accept the licensee's explanation with reference to the purported conditional sales agreement. I believe she acted in good faith despite the fact that the agreement had not been cancelled of record. Under the circumstances, the charges preferred herein will be dismissed.

Accordingly, it is, on this 2nd day of October, 1947,

ORDERED that the charges herein be and the same are hereby dismissed.

ERWIN B. HOCK
Commissioner.

4. LICENSED PREMISES - "ALL STARS" MACHINE, A MINIATURE BASEBALL GAME, PERMISSIBLE UNDER CONDITIONS SET FORTH HEREIN.

October 6, 1947

Seacoast Distributors Inc.
Newark, N. J.

Gentlemen:

You ask whether a coin operated machine called the "All Stars" is permissible at taverns or other licensed premises in New Jersey.

The machine is a miniature baseball game. It has a playing surface about 2' wide and 4' long, which is tilted toward the player, and has an automatic electric scoreboard.

There are fifteen holes located about the playing surface, nine at the far end and three on each side. Of these various holes, four are designated "out"; six are "single"; two are "sacrifice"; and the other three are "double", "triple" and "home run" respectively.

In the center of the playing surface, corresponding to the pitcher's box on a baseball field, there is a trap door. The player pushes a lever on the outside of the machine with his left hand, and a small plastic ball emerges from this trap door and rolls toward the foot of the machine, where a bat is located. By turning a knob on the outside with his right hand, the player releases this bat as

the ball descends and the ball, if hit, then bounds up the playing surface. If the hit is straight and direct, the ball will roll up into the hole designated "home run". If not, the ball may roll into one of the other holes and register accordingly. If the ball is missed by the bat or if, being hit, it drops into none of the holes on the playing surface, the ball rolls down to the foot of the machine into a chute and, since not having registered in any way, it can be reused.

There are no obstructions or obstacles of any kind on the playing surface. The player scores in the manner of ordinary baseball play, depending upon the holes into which his hits drop, and he continues to play until he has registered three "outs". Insertion of a nickel entitles the player to one game of three outs; a dime, to two games; and a quarter, to five games.

Rules 7 and 8 of State Regulations No. 20 of this Department prohibit slot machines, and also gambling machines per se, and also devices commonly known as bagatelle or pinball machines from being located at taverns or other licensed premises in New Jersey.

The miniature baseball machine in question falls within none of these prohibited categories. Hence, so far as this Department is concerned, this machine, as above described, is permissible at licensed premises in New Jersey provided that (a) it contains no free game or pay-off device of any kind; (b) it is not used for gambling in any way; and (c) any and all local regulations pertaining to it are fully complied with.

Very truly yours,
ERWIN B. HOCK
Commissioner.

5. DISCIPLINARY PROCEEDINGS - APPLICATION FOR WRIT OF CERTIORARI HAVING BEEN ABANDONED, ORDER ENTERED FIXING EFFECTIVE DATES OF SUSPENSION.

In the Matter of Disciplinary Proceedings against)

THE PANDA (a corporation))
990 Frelinghuysen Ave.)
Newark 5, N. J.,)

O R D E R

Holder of Plenary Retail Consumption License C-180 for the 1945-46, 1946-47 and 1947-48 fiscal years, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
-----)

BY THE COMMISSIONER:

On August 8, 1947, the penalty theretofore imposed against this defendant was stayed to permit the defendant to apply to the Supreme Court for a writ of certiorari. See Bulletin 774, Item 4.

The defendant, through its attorney, now advises that it has decided to abandon such application. The penalty, therefore, will now be reinstated.

Accordingly, it is, on this 10th day of October, 1947,

ORDERED that Plenary Retail Consumption License C-180, issued for the current licensing year by the municipal Board of Alcoholic Beverage Control of the City of Newark to The Panda (a corporation) for premises 990 Frelinghuysen Avenue, Newark, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. October 15, 1947; and it is further

ORDERED that, in the event a correction is effected, leave is hereby given to make application to the State Commissioner of Alcoholic Beverage Control to lift said suspension provided, however, that in no event will said suspension be lifted until a full period of 60 days has elapsed from the effective date of said suspension.

ERWIN B. HOCK
Commissioner.

6. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

JOSEPH ELIA
157 Parrow Street
Orange, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-19 for the 1946-47 and 1947-48 fiscal years; both issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange.

Joseph C. Cassini, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to the following charge:

"In your application dated June 3, 1946, filed with the Municipal Board of Alcoholic Beverage Control of the City of Orange, upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question 33, which asks: 'Have you....ever been convicted of any crime?', whereas in truth and fact you had been convicted in the Essex County Court of Quarter Sessions for fornication on December 21, 1914 and for assault and battery with intent to abuse on February 20, 1920; said false statement being in violation of R. S. 33:1-25."

Fingerprint records disclose that on December 21, 1914, defendant was placed on probation for two years after he had pleaded guilty in a Court of Quarter Sessions to the crime of fornication. It further appears that, at the time this crime was committed, defendant was

under the age of eighteen years. Under the circumstances I conclude that the crime did not involve moral turpitude. Cf. Re Case No. 66, Bulletin 202, Item 6. Fingerprint records further disclose that on February 20, 1920, defendant was convicted in a Court of Quarter Sessions of the crime of assault and battery with intent to abuse. He was sentenced to an indeterminate term in a reformatory and remained there for a period of about one year. It also appears that between 1914 and 1927 he was fined on one or more occasions as a disorderly person. A conviction as a disorderly person is not a conviction of a crime within the meaning of R. S. 33:1-25, and hence defendant was not required to reveal in the application for a license his convictions as a disorderly person. Re Case No. 65, Bulletin 193, Item 11. There is no doubt, however, that the answer in the application was false in view of the fact that defendant was convicted of the crimes of fornication and assault and battery with intent to abuse.

Defendant has held a plenary retail consumption license in the City of Orange for more than twelve years last past. In his amended application for his 1947-48 license defendant revealed the two convictions set forth above, and the local issuing authority thereupon renewed his license for the current fiscal year. This result indicates that the local issuing authority concluded that neither of the crimes involved moral turpitude because, otherwise, defendant would not be eligible to obtain renewal of his license. I have examined the facts disclosed by our investigation concerning the conviction for assault and battery with intent to abuse and, under the circumstances, I concur in the result reached by the local issuing authority. Although defendant is not ineligible to hold a license, a suspension must be imposed because of the false statement made in his application dated June 3, 1946.

Defendant has a prior record. On May 18, 1943, his license was suspended by the local issuing authority for a period of five days for sales to minors. I shall suspend defendant's license for a period of fifteen days, less five days for the plea, making a net suspension of ten days. Re Ostrowski, Bulletin 726, Item 5.

Although this proceeding was instituted during the 1946-47 licensing period, it does not abate but remains fully effective against the renewal license for the licensing year 1947-48. State Regulations No. 16.

Accordingly, it is, on this 9th day of October, 1947,

ORDERED that Plenary Retail Consumption License C-19, issued for the 1947-48 fiscal year by the Municipal Board of Alcoholic Beverage Control of the City of Orange to Joseph Elia, for premises 157 Parrow Street, Orange, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. October 20, 1947, and terminating at 2:00 a.m. October 30, 1947.

ERWIN B. HOCK
Commissioner.

7. RECAPITULATION OF ACTIVITY FOR QUARTERLY PERIOD FROM JULY 1, 1947 THROUGH SEPTEMBER 30, 1947

ARRESTS:	JULY	AUG.	SEPT.	TOTAL
Licenses and employees	0	0	2	2
Bootleggers	9	9	12	30
SEIZURES:				
Still - under 50 gallons	0	0	3	3
over 50 gallons	1	0	2	3
Motor vehicles - cars	0	1	1	2
trucks	0	1	0	1
Brewed malt beverages - gallons	27.37	21.06	19.50	67.93
Wine - gallons	218.32	4.35	32.33	255.00
Illicit alcohol - gallons	1.95	0	36.50	38.45
Distilled alcoholic beverages - gallons	0	33.00	4.40	37.40
Mash - gallons	0	0	2800.00	2800.00
RETAIL LICENSEES:				
Total number of premises inspected	823	961	725	2509
Total number of premises where alcoholic beverages were gauged	397	590	812	1799
Total number of bottles gauged	6373	10,233	12,875	29,481
Total number of premises where violations were found	111	75	46	232
Total number of violations found	130	114	62	306
Type of violations found:				
Illicit liquor - bottles	14	38	15	67
Unqualified employees	20	1	17	38
Regulations #38 sign not posted	23	17	10	50
Gambling devices	32	8	4	44
Improper beer taps	12	11	0	23
Probable front	6	13	1	20
Disposal permit necessary	4	5	6	15
Prohibited signs	2	2	4	8
Other mercantile business	1	3	3	7
Price pamphlet not displayed	1	1	0	2
Other violations	15	0	4	19
STATE LICENSEES:				
Premises inspected	0	0	5	5
License applications investigated	25	16	18	59
COMPLAINTS:				
Complaints assigned for investigation	332	326	243	901
Complaints investigated, reviewed and closed	396	284	281	961
Investigations completed - not closed administratively	11	19	11	41
Investigations assigned, not yet completed	255	261	210	726
LABORATORY:				
Analyses made	111	100	101	312
"Shake-up" cases (alcohol, water and artificial color) - bottles	5	7	8	20
Liquor found to be not genuine as labeled - bottles	18	4	18	40
IDENTIFICATION BUREAU:				
Criminal fingerprint identifications made	8	12	13	33
Persons fingerprinted for non-criminal purposes	365	223	199	787
Identification contacts made with other enforcement agencies	387	171	209	767
Motor vehicle identifications via N.J. State Police Teletype	12	4	5	21
DISCIPLINARY PROCEEDINGS:				
Cases transmitted to municipalities	14	17	13	44
Violations involved:				
Possessing mislabeled beer taps	3	9	0	12
Sale during prohibited hours	4	1	6	11
Sale to minors	4	3	3	10
Unqualified employees	0	3	1	4
Permitting bookmaking on premises	0	1	2	3
Permitting brawls on premises	1	1	1	3
Permitting immoral activity	1	0	1	2
Possessing chilled beer (LT licensee)	1	0	1	2
Sale outside scope of license	1	0	1	2
Conducting business as a nuisance	0	0	1	1
Permitting gambling on premises	0	0	1	1
Permitting hostesses on premises	0	0	1	1
Permitting noise on premises	1	0	0	1
Permitting prostitutes on premises	1	0	0	1
Sale to intoxicated persons	0	0	1	1

	<u>JULY</u>	<u>AUG.</u>	<u>SEPT.</u>	<u>TOTAL</u>
<u>DISCIPLINARY PROCEEDINGS: - Cont'd</u>				
Cases instituted at Department	14	13	14	41
Violations involved:				
Fraud and front	2	4	3	9
Possessing illicit liquor	4	1	3	8
Sale during prohibited hours	4	1	3	8
Permitting pin ball machines on premises	0	2	2	4
Sale outside scope of license	2	1	1	4
Permitting immoral activity on premises	0	2	1	3
Sale under Fair Trade price	1	2	0	3
Conducting business as a nuisance	0	2	0	2
Furthering illegal activity	0	2	0	2
Permitting prostitutes on premises	0	2	0	2
Sale to minors	1	0	1	2
Sale to non-members by clubs	1	1	0	2
Unqualified employees	0	0	2	2
Failure to afford view into premises during prohibited hours	1	0	0	1
Failure to file notice of change in application	0	0	1	1
Failure to file notice of retailer's default	0	1	0	1
Hindering investigation	0	0	1	1
Licensee working while drunk	0	0	1	1
Permitting bookmaking on premises	1	0	0	1
Permitting hostesses on premises	0	0	1	1
Permitting lottery activity on premises	0	0	1	1
Possessing gambling devices	0	1	0	1
Permitting slot machines on premises	0	1	0	1
Sale to retailer in default	0	1	0	1
Serving beverages other than ordered	0	0	1	1
Serving women at bar	0	1	0	1
Cases brought by municipalities	0	7	2	9
Violations involved:				
Sale to minors	0	3	2	5
Permitting bookmaking on premises	0	1	0	1
Permitting brawls on premises	0	1	0	1
Sale during prohibited hours	0	1	0	1
Violation of special condition	0	1	0	1
<u>CANCELLATION PROCEEDINGS:</u>				
Cases instituted by Department	2	1	1	4
Violations involved:				
Fraud and front	1	1	1	3
Issuance in violation of Limitation Law	1	0	0	1
<u>HEARINGS HELD AT DEPARTMENT:</u>				
Total number of hearings held	51	50	48	149
Appeals	8	21	26	55
Disciplinary proceedings	13	12	13	38
Eligibility	6	6	5	17
Seizures	2	5	3	10
Applications for license	2	6	1	9
<u>PERMITS ISSUED:</u>				
Total number of permits issued	5554	1086	1037	7677
Employment	1801	231	126	2158
Solicitors	2717	132	185	3034
Social affairs	348	415	445	1208
Disposal of alcoholic beverages	38	217	87	342
Special wine	26	7	71	104
Miscellaneous	574	84	123	781

ERWIN B. HOCK,
Commissioner.

8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

WARREN G. DENTZ)
T/a CLOSTER MANOR)
411 Piermont Road)
Closter, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-8, issued by the Borough Council of the Borough of Closter.)
-----)

Warren G. Dentz, Defendant Pro Se.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to the following charge:

"On September 19, 1947, you possessed an illicit alcoholic beverage at your licensed premises, viz., an alcoholic beverage in

One 4/5 quart bottle labeled 'Haig & Haig Finest Blended Scots Whisky'

which bottle bore a label which did not truly describe its contents; such possession being in violation of R. S. 33:1-50."

The file herein discloses that on September 19, 1947, an investigator of the Department of Alcoholic Beverage Control tested thirty-two open bottles and seized the bottle mentioned in the charge when his preliminary test indicated that the contents thereof were not genuine. Subsequent analysis by a chemist employed by the Department of Alcoholic Beverage Control disclosed that the contents of the seized bottle varied in color from the contents of a genuine sample, and that the contents of the seized bottle were 13.8° lower in proof than the proof as set forth on the label.

Defendant alleges that neither he nor his wife tampered with the contents of the seized bottle, and states that he cannot explain how the variation occurred except that it may have been caused by one of six temporary employees who are no longer in his employ. Nevertheless, a licensee is strictly responsible for the condition of his stock of alcoholic beverages. Cf. Cedar Restaurant & Cafe Co. v. Hock, 135 N.J.L. 156.

Defendant has no prior record. I shall suspend his license for the minimum period of fifteen days, less five days for the plea, making a net suspension of ten days.

Accordingly, it is, on this 20th day of October, 1947,

ORDERED that Plenary Retail Consumption License C-8, issued by the Borough Council of the Borough of Closter to Warren G. Dentz, t/a Closter Manor, for premises 411 Piermont Road, Closter, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. October 27, 1947, and terminating at 2:00 a.m. November 6, 1947.

ERWIN B. HOCK
Commissioner.

9. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

WILLARD & ROSE HENDERSON)
Route 23, Sussex-Hamburg Road)
Wantage Township)
P.O. Sussex, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-8, issued by the Township Committee of the Township of Wantage.)

-----)
Willard and Rose Henderson, Defendant-licensees, Pro Se.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendants plead non vult to a charge alleging that, on September 11, 1947, they possessed an illicit alcoholic beverage at their licensed premises, to wit, a 4/5 quart bottle labeled "Teacher's Highland Cream Perfection of Blended Scotch Whisky", which contained an alcoholic beverage not genuine as labeled, in violation of R. S. 33:1-50.

On September 11, 1947 an inspector of the Department of Alcoholic Beverage Control tested 26 open bottles on defendants' premises and seized the bottle mentioned in the charge. Subsequent analysis disclosed that the contents of the seized bottle were much higher in solids than the contents of genuine samples of the same product.

The defendants' record is otherwise clear of any prior adjudicated violations. I shall suspend their license for a minimum period of fifteen days, less five days' remission for the plea entered herein, or a net suspension of ten days. Cf. Re Roemer, Bulletin 758, Item 5.

Accordingly, it is, on this 20th day of October, 1947,

ORDERED that Plenary Retail Consumption License C-8, issued by the Township Committee of the Township of Wantage to Willard & Rose Henderson, for premises on Route 23, Sussex-Hamburg Road, Wantage Township, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. October 27, 1947, and terminating at 3:00 a.m. November 6, 1947.

ERWIN B. HOCK
Commissioner.

10. APPELLATE DECISIONS - FOGELSON v. MONTVILLE.

SAMUEL FOGELSON,)
)
 Appellant,)
)
 -vs-)
)
 TOWNSHIP COMMITTEE OF THE)
 TOWNSHIP OF MONTVILLE,)
)
 Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

William H. Yanowsky, Esq., Attorney for Appellant.
David Young, 3rd, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the respondent's denial of appellant's application for a plenary retail distribution license for premises on Main Road, Towaco, Montville Township, N. J.

The denial was predicated, in the main, upon the ground that there already exist in the municipality a sufficient number of licensed establishments to cater to the needs and necessity of the residents.

With a population of 3,207 according to the last Federal census, the township has outstanding 16 plenary retail consumption licenses, or one such license for every 200 persons residing there. The mere recital of these figures amply supports the reasonableness of the respondent's policy against the issuance of any additional licenses in the township.

The appellant contends, however, that the issuance of a distribution license for his premises, where he operates a large self-service grocery store, will serve the convenience of his patrons. In support of this contention, he has produced a petition favoring the issuance of a license to him, signed by several hundred of his customers. The respondent also produced a petition signed by approximately 200 persons, some of whom also patronize the appellant's store, in opposition to the appellant's application.

No distribution license has been issued in the municipality since more than ten years ago. The last such license was held by one of the present consumption licensees. While it is true that, in a proper case, an issuing authority may recognize, and be guided by, the differences between a distribution and a consumption license (cf. Bambo v. Belleville et al., Bulletin 355, Item 6; Rappaport v. Union Township and Danzis, Bulletin 664, Item 2), it is fundamental that it rests within the sound discretion of the issuing authority to determine, in the first instance, whether those differences warrant the issuance of an additional license, when considered in the light of the public interest and the need and necessity of the inhabitants of the municipality as a whole. The respondent concluded, in its discretion, that there was not a sufficient public necessity to be served by the granting of the instant application. Upon an examination of the entire record, I cannot find that the appellant has sustained the burden of proving that the respondent has abused such discretion, or that its determination is so arbitrary and unreasonable that it cannot be permitted to stand. Cf. Iacovone v. Gloucester Township, Bulletin 644, Item 4; Gorcica v. Wallington, Bulletin 659, Item 10.

The action of the respondent is therefore affirmed.

Accordingly, it is, on this 20th day of October, 1947;

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

ERWIN B. HOCK
Commissioner

- 11. DISCIPLINARY PROCEEDINGS - "FRONT" - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF LICENSE - FALSE STATEMENT AS TO EXTENT OF LICENSED PREMISES - VIOLATION OF R. S. 33:1-34 - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO APPLY FOR LIFTING SUSPENSION AFTER 45 DAYS UPON CORRECTION OF ILLEGAL SITUATION.

In the Matter of Disciplinary Proceedings against
 LAURA E. MANNERBERG
 T/a SUOMI HOVI BAR
 Nolan's Point
 Jefferson Township
 P.O. Lake Hopatcong, N.J.,

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consumption License C-30 issued by the Township Committee of the Township of Jefferson.

 William H. H. Ely, Esq., Attorney for Defendant-licensee.
 Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to the following charges:

"1. In your application filed with the Jefferson Township Committee and upon which you obtained your current plenary retail consumption license, you falsely stated, in answer to Question 3, that your residence was Suomi Hovi Hotel (Nolan's Point, Jefferson Township, N.J.), whereas in truth and fact you were a resident of the State of New York; in violation of R. S. 33:1-25.

"2. In your aforesaid application, you falsely stated, in answer to Questions 7 and 8, that you leased or rented from Suomi Hovi Corporation the dining room of the Suomi Hovi Hotel which would constitute a portion of the licensed premises, whereas in truth and fact you leased and rented only the bar premises in the basement of the hotel and the grounds outside the bar; in violation of R. S. 33:1-25.

"3. In your aforesaid application, you falsely stated 'No' in answer to Question 30, which asks: 'Has any individual...., other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?', whereas in truth and fact Ralph Mannerberg, a resident of the State of New York, was so interested as a real and beneficial owner, in violation of R. S. 33:1-25.

"4. From June 1, 1947 and until the present time, you knowingly aided and abetted Ralph Mannerberg to exercise, contrary to R. S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses; in violation of R.S.33:1-52.

"5. You failed to file with the Jefferson Township Committee, within ten days after the occurrence thereof, a written notice of change occurring in the facts set forth in answer to Question 31 of your application for your current plenary retail consumption license, such change being that during the month of July 1947, you agreed to pay twenty per cent of the net profits derived from the licensed business to an employee, Lyyli Aalto; in violation of R. S. 33:1-34."

As to charges (1), (3) and (4): The file in this case discloses that defendant and Ralph Mannerberg, her husband, maintain a home at 31 - 70th Street, Brooklyn, New York. Since 1945 they have rented, by the year, a cottage which adjoins the Suomi Hovi Hotel at Nolan's Point, Lake Hopatcong. During the summers they live at the cottage, but during the balance of the year they live at their home in Brooklyn and stay at the cottage only on week-ends. Ralph Mannerberg is employed as a school teacher in New York City; votes in the State of New York, and has his automobile registered from his Brooklyn address. Defendant is registered as a voter in the State of New York. The money to purchase the license was furnished by the husband, and the proceeds from the licensed business have been deposited in a joint account in the names of the licensee and her husband. The words "resident" and "residence", as used in the present law, contemplate physical presence in addition to domicile. "Domicile" means the place where a person maintains his permanent home to which, when he is absent, he has the intention of returning. Re Paul, Bulletin 620, Item 8. I find that neither defendant nor her husband is a bona fide resident of New Jersey. Cf. Re Meyers & Phelan, Bulletin 635, Item 4.

As to charge (2): It appears that the dining room is not mentioned in the lease entered into between Suomi Hovi Corporation and defendant. Hence the answers to Questions 7 and 8 are false. A licensee must be in possession and control of his licensed premises, and a mere "concession" to sell alcoholic beverages in the dining room of the hotel will not suffice.

As to charge (5): It appears that in July 1947, after her license was renewed, defendant agreed to pay to Lyyli Aalto, her sister, 20% of the net profits at the end of the season. Defendant failed to give written notice of this change in the facts set forth in the application as required by R. S. 33:1-34. In mitigation defendant alleges that she did not know she was required to do so. Ignorance of the law, however, cannot excuse the violation.

Defendant has represented that an application is to be made to the local issuing authority to transfer the license to a duly qualified person. Since it appears that the unlawful situation continues to exist, I have no alternative except to suspend the license for the balance of its term. Under the circumstances of this case, leave will be given to a transferee of the license to file with me a petition to lift the suspension herein imposed after the expiration of forty-five days from the effective date thereof. If petition is filed, the petitioner must satisfy me that the unlawful situation has been corrected. I shall dismiss the rule to show cause why the license should not be cancelled.

Accordingly, it is, on this 21st day of October, 1947,

ORDERED that Plenary Retail Consumption License C-30, issued by the Township Committee of the Township of Jefferson to Laura E. Mannerberg for premises at Nolan's Point, Jefferson Township, be and the same is hereby suspended for the balance of its term expiring June 30, 1948, effective at 3:00 a.m. October 24, 1947; with leave to file a petition to lift said suspension as aforesaid; and it is further

ORDERED that the rule to show cause why the license should not be cancelled be and hereby is dismissed.

ERWIN B. HOCK
Commissioner.

12. DISCIPLINARY PROCEEDINGS - SOLICITOR'S PERMIT REVOKED, DESPITE SURRENDER, FOR VIOLATIONS COMMITTED WHILE HOLDER OF STATE BEVERAGE DISTRIBUTOR'S LICENSE.

In the Matter of Disciplinary Proceedings against)
 LEO A. MOORE)
 46 Delawareview Avenue)
 Trenton, N. J.,)
 Holder of Solicitor's Permit)
 No. 3015 for the 1946-47 licensing)
 period, issued by the State Com-)
 missioner of Alcoholic Beverage)
 Control.)

CONCLUSIONS AND ORDER

 William A. Moore, Esq., Attorney for Defendant-permittee.
 Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to the following charges:

"1. You failed to file with the State Commissioner of Alcoholic Beverage Control within 10 days after the occurrence thereof, requisite written notice of change occurring in the facts set forth in answer to Question 22 of the application for your State Beverage Distributor's license for the licensing period commencing July 1, 1946, such change being that on or about November 1, 1946, Flavius Cattani acquired an interest, directly or indirectly, in the license and in the business conducted under said license; your failure to file such requisite notice being in violation of R. S. 33:1-34.

"2. From on or about November 1, 1946, to on or about March 14, 1947, you knowingly aided and abetted Flavius Cattani to exercise, contrary to R. S. 33:1-26, the rights and privileges of the State Beverage Distributor's license, issued to you for the licensing period commencing July 1, 1946, thereby yourself violating R. S. 33:1-52.

"3. You failed to file with the State Tax Commissioner a true report disclosing the alcoholic beverages distributed, transported, imported, purchased and sold by you as a State Beverage Distributor during the month of November, 1946, in that you failed to report purchase and sale of 2,000 cases of beer during that month; in violation of R. S. 54:45-1 and R. S. 54:47-5."

The violations set forth in the charges were committed while defendant was the holder of a State Beverage Distributor's license, issued by the State Commissioner. Said license, however, was transferred to a third party and the defendant herein thereafter applied for and received Solicitor's Permit No. 3015 for the 1946-47 licensing period.

Counsel for defendant notified the Department that defendant would not appear on the day of the hearing scheduled in this matter but would submit the case for determination to the State Commissioner of the Department of Alcoholic Beverage Control on the facts that were established as a result of the investigation.

Counsel for defendant further stated in a written communication to this Department that defendant "has informed me that he never intends

to engage in the liquor business again and it is for this reason that he has already surrendered his permit." No application for renewal of the permit was made for the current licensing period.

Inasmuch as the departmental investigation discloses that defendant "farmed out" his license to Flavius Cattani and thereby committed the violations as alleged in the charges, I find defendant guilty as charged.

Notwithstanding the proffered surrender and intervening expiration of defendant's permit, it may nevertheless be suspended or revoked. State Regulations No. 16, Rules 1 and 2. However, since a mere suspension would inflict no penalty because the permit has expired, it will be revoked, thereby penalizing defendant to the extent that he will be ineligible to hold any alcoholic beverage license or permit in New Jersey for two years hereafter. See R. S. 33:1-31.

Accordingly, it is, on this 21st day of October, 1947,

ORDERED that Solicitor's Permit No. 3015, heretofore issued to Leo A. Moore for the licensing year 1946-47, be and the same is hereby revoked, effective immediately.

ERWIN B. HOCK
Commissioner.

13. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against
HARRY PINE & MORRIS SHAW
11 Hamilton Avenue
Paterson 1, N. J.,

Holder of Plenary Retail Consumption License C-349 for the 1946-47 fiscal year, and now holder of Plenary Retail Consumption License C-349 for the 1947-48 fiscal year; both issued by the Board of Alcoholic Beverage Control of the City of Paterson.

CONCLUSIONS AND ORDER

Frank W. Shershin, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendants pleaded not guilty to the following charges:

"1. On divers dates during the month of November 1946, you sold alcoholic beverages at your licensed premises to Bertha --- and William ---, minors, in violation of R. S. 33:1-77.

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

At the hearing herein Bertha --- testified that in November 1946 she was eighteen years of age, and William --- testified that in November 1946 he was twenty years of age. It is well established that testimony by a person as to his or her age is admissible.

At the hearing Bertha --- testified that she visited defendants' premises on a number of occasions during the latter part of November 1946; that on some of these visits she was served a drink consisting of "half beer, half birch", and that on a few visits she was served with whiskey. She further testified that these drinks were served either by William McAfee, a bartender, or Morris Shaw, one of the licensees.

William --- testified that he visited defendants' premises on two or three occasions during the latter part of November 1946, and that on each visit he accompanied Bertha --- and another girl. He further testified that on each visit he drank beer and that Bertha drank "either beer or birch and beer". All of these drinks, he said, were served by William McAfee.

On behalf of defendants, William McAfee and Morris Shaw testified that they had never seen William --- in defendants' premises. Both admitted that Bertha --- had frequently visited the premises. Both testified that Bertha told them she was "old enough" but that they had served her only birch beer and had refused to serve her any alcoholic beverages because she could produce no written evidence as to her age.

At the time of the hearing Bertha --- was confined to a reformatory as a result of conviction of a crime. Under these circumstances I would hesitate to accept her testimony, if uncorroborated. However, I can discover no reason why William --- should deliberately lie and I shall accept his testimony as true. The denials by defendants' witnesses are not sufficient to overcome William's testimony that, on two or three occasions, he drank alcoholic beverages and also saw Bertha --- drinking alcoholic beverages on defendants' premises. I find defendants guilty as charged.

Defendants have no previous adjudicated record. I shall suspend their license for the minimum of ten days. Re Wink & Leitner, Bulletin 755, Item 9.

Although this proceeding was instituted during the prior licensing term, it does not abate but remains fully effective against the renewal license for the current term. State Regulations No. 16.

Accordingly, it is, on this 21st day of October, 1947,

ORDERED that Plenary Retail Consumption License C-349, issued for the present fiscal year by the Board of Alcoholic Beverage Control of the City of Paterson to Harry Pine & Morris Shaw, for premises 11 Hamilton Avenue, Paterson, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. October 28, 1947, and terminating at 3:00 a.m. November 7, 1947.

ERWIN B. HOCK
Commissioner.

14. STATE LICENSES - NEW APPLICATIONS FILED.

Park & Tilford Distillers, Inc.

223-25-27-29-31 Orient Ave., Jersey City, N. J.

Application for Rectifier and Blender License filed October 14, 1947.

Kelly Beverages

Kelly Place

Stanhope, N. J.

Application filed October 14, 1947 for transfer of Plenary Wholesale License W-26 from Philip J. Kelly, t/a Kelly Beverages.

Giuseppe Farruggio, t/a Bristol & Philadelphia Auto Express
301 Mansion St., Bristol, Pa.

Application for Transportation License filed October 15, 1947.

Barbey's, Inc.

N. W. Cor. W. Elm & Gordon Sts., Reading, Pa.

Application for Limited Wholesale License filed October 17, 1947.

ERWIN B. HOCK
Commissioner.

15. FAIR TRADE - NOTICE OF COMPLETE PUBLICATION.

October 22, 1947.

The next official publication of minimum resale prices pursuant to Fair Trade rules (Regulations No. 30) will become effective on December 2, 1947. Price listings must be filed with the offices of this Department not later than Friday, October 31, 1947.

It is my decision that the publication shall combine all of the prices into one complete pamphlet superseding the September 1947 publication.

In submitting price lists to the Department for this complete publication, it is requested that:

(1) A complete schedule of all items offered for sale by manufacturers and wholesalers in this State shall be submitted. Exceptions will be considered if good cause be shown on or before Friday, October 31, 1947. However, listers must recognize the extreme disadvantage they impose upon retailers who are restricted in sales promotion of brands not listed in Fair Trade pamphlets. Pursuant to a Department ruling, brands of alcoholic beverages not listed in Fair Trade publications may not be price-advertised (including direct or indirect reference to price) in any periodical, publication, circular, handbill or direct mailing piece in New Jersey.

(2) Traditional markups of 33-1/3% on spirits, 45% on cordials and liqueurs and 50% on wines should be maintained.

(3) It is earnestly suggested that no drastic reductions in minimum resale prices be effected unless at the same time a comparable reduction is made in the wholesale prices to be listed in the official monthly wholesale price pamphlet. Further, it is important that before effecting a drastic reduction in Fair Trade, manufacturers and wholesalers of the items and brands involved shall determine that retailers' inventories are exhausted of the items at the higher wholesale prices.

(4) Only manufacturers and wholesalers owning brands to be listed in Fair Trade, or wholesalers having specific written authorization from the owners of brands, may file price listings for publication in minimum resale price pamphlets.

(5) In order to afford New Jersey licensees an equitable position of competition with licensees in adjoining states, the Department will accept price filings which set forth a permissive discount for case lot purchases of limited brands. Where listers of brands choose to restore a permissive case lot discount, the phrase "Discount of ___% permitted on case lot purchases" should be used.

Notification of the proportionate share of aggregate expenses involved in the publication of the complete pamphlet will be made to participating companies as soon as the pamphlet is mailed to all retail licensees.

New Jersey State Library

Erwin B. Hock
Commissioner.