

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

BULLETIN 576

JULY 14, 1943.

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

BULLETIN 576

JULY 14, 1943.

1. APPELLATE DECISIONS - ARONS AND RICH, DIRECTORS OF BAYOU HOLDING CO., INC. v. NEWARK AND THORNE.
APPELLATE DECISIONS - ST. FRANCIS HOTEL CO. v. NEWARK.

ESTHER ARONS and ROSE RICH, as)
Directors of and on behalf of)
BAYOU HOLDING CO., INC., a cor-)
poration of the State of New)
Jersey,)

Appellants,)

-vs-)

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY OF)
NEWARK and ANNA M. THORNE,)

Respondents.)

-----)
ST. FRANCIS HOTEL CO., a corpora-)
tion of the State of New Jersey,)

Appellant,)

-vs-)

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF NEWARK,)

Respondent)
-----)

ON APPEAL
CONCLUSIONS

Norman Kruvant, Esq., Attorney for both Appellants.
Raymond Schroeder, Esq., by Harry G. Cohen, Esq., Attorney for
Municipal Board of Alcoholic Beverage Control
of the City of Newark.
Louis Auerbacher, Jr., Esq., Attorney for Respondent, Anna M. Thorne.

BY THE COMMISSIONER:

The above appeals were filed to review the action of respondent Municipal Board in granting transfer of License C-641 from Bayou Holding Co., Inc. to Anna M. Thorne for 12 E. Park Street, Newark, and also from the action of respondent Municipal Board in denying a transfer of said license from Bayou Holding Co., Inc. to St. Francis Hotel Co. for premises at 22-24 E. Park Street, Newark.

At the hearing held herein, it appeared that the application to transfer the license from Bayou Holding Co., Inc. to Anna M. Thorne did not bear the consent in writing of the licensee to such transfer, as required by R. S. 33:1-26.

At the conclusion of the hearing, the attorneys for all parties moved that the causes be remanded to the respondent Municipal Board for reconsideration and further proceedings consistent with the opinion expressed by the Commissioner at the hearing.

No reason appearing why such an order should not be entered, it is, on this 29th day of June, 1943,

ORDERED, that the above entitled appeal cases be remanded to the Municipal Board of Alcoholic Beverage Control of the City of Newark for reconsideration and further proceedings on the applications for transfer of Plenary Retail Consumption License C-641 now held by Bayou Holding Co., Inc. for premises located at 22-24 E. Park Street, Newark, said proceedings to be consistent with the opinion expressed by the Commissioner at the hearing.

ALFRED E. DRISCOLL
Commissioner.

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

In the Matter of Disciplinary Proceedings against)

KATE FRATER)
671-673 Boulevard)
Bayonne, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-172 for the fiscal year 1942-43 and now holder of Plenary Retail Consumption License C-172 for the current (1943-44) year, issued by the Board of Commissioners of the City of Bayonne.)
- - - - -)

Kate Frater, Pro Se.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleads non vult to charges which, in substance, allege that she sold and served alcoholic beverages to three minors, members of the United States Navy, at her tavern, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

This is defendant's first adjudicated offense. The Departmental file discloses that two of the sailors were nineteen years old and the other was seventeen years old. No excuse can be made as to serving without question the sailor who was seventeen years of age. The usual penalty for sale to a minor, where there are no aggravating circumstances, is ten days. However, because of the youthfulness of one of the sailors mentioned herein, I shall increase this penalty to fifteen days. Five days will be remitted for the plea. See Re Wells, Bulletin 564, Item 2.

Accordingly, it is, on this 1st day of July, 1943,

ORDERED, that Plenary Retail Consumption License C-172, heretofore issued by the Board of Commissioners of the City of Bayonne for the current fiscal year to Kate Frater for premises 671-673 Boulevard, Bayonne, be and the same is hereby suspended for ten (10) days, commencing at 3:00 A.M. July 6, 1943, and terminating at 3:00 A. M. July 16, 1943.

ALFRED E. DRISCOLL
Commissioner.

3. ACTIVITY REPORT FOR JUNE, 1943

To: Alfred E. Driscoll, Commissioner

<u>ARRESTS:</u>	Licenses and employees - - - - -	14	Bootleggers - - - - -	8
	Total number of persons arrested- - - - -			22
<u>SEIZURES:</u>	Stills - 1 to 50 gallons daily capacity - - - - -			0
	50 gallons and more daily capacity - - - - -			1
	Total number of stills seized - - - - -			1
	Mash - gallons- - - - -			20
	Motor vehicles - Trucks - - - - -			1
	Passenger cars - - - - -			2
	Total number of motor vehicles seized - - - - -			3
	Beverage alcohol - gallons- - - - -			10.00
	Brewed malt alcoholic beverages (beer, ale, etc.) - gallons - - - - -			3.43
	Wine - gallons- - - - -			12.24
	Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons - - - - -			81.55
<u>RETAIL LICENSEES:</u>				
	Number of premises inspected- - - - -			1,773
	Total number of bottles gauged- - - - -			13,063
	Total number of premises where violations were found- - - - -			43
	Number and type of violations found:			
	Illicit (bootleg) liquor - 10 "Fronts" (concealed ownership) - - - - -			3
	Gambling devices - - - - - 1 Improper beer tap markers- - - - -			0
	Prohibited signs - - - - - 0 Stock disposal permits necessary - - - - -			3
	Unqualified employees- - - - - 56 Other types of violations- - - - -			4
<u>MILITARY AREA PATROL INSPECTIONS:</u>				586
<u>STATE LICENSEES:</u>				
	Premises inspected - - - - -			53
	License applications investigated- - - - -			563
<u>COMPLAINTS:</u>				
	Investigated, reviewed and closed- - - - -			310
	Investigation assigned, not yet completed- - - - -			288
<u>LABORATORY:</u>				
	Analyses made- - - - -			114
	"Shake-up" cases (alcohol, water and artificial coloring)- - - - -			6
	Liquor found to be not genuine as labeled- - - - -			19
<u>IDENTIFICATION BUREAU:</u>				
	Criminal fingerprint identifications made- - - - -			17
	Persons fingerprinted for non-criminal purposes- - - - -			342
	Identification contacts with other enforcement agencies- - - - -			510
	Motor vehicle identifications via N. J. State Police Teletype- - - - -			18
<u>DISCIPLINARY PROCEEDINGS:</u>				
	Cases transmitted to municipalities- - - - -			18
	Cases instituted at Department - - - - -			26
	Cancellation proceedings - - - - -			2
<u>HEARINGS HELD AT DEPARTMENT:</u>				
	Number of hearings held- - - - -			46
	Appeals- - - - - 4 Seizures- - - - -			5
	Disciplinary proceedings - - - - - 31 Application for license - - - - -			1
	Eligibility- - - - - 5			
<u>PERMITS ISSUED:</u>				
	Total number of permits issued - - - - -			514
	Unqualified employees - - - - -			174
	Solicitors- - - - -			59
	Social affairs- - - - -			139
	Home manufacture of wine- - - - -			0
	Disposal of alcoholic beverages - - - - -			56
	Miscellaneous permits - - - - -			86

Respectfully submitted,
 Sydney B. White
 Chief Inspector.

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 BROAD STREET NEWARK, N. J.

4.

NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1ST, 1942
TO JUNE 30TH, 1943 AS PER CERTIFICATIONS RECEIVED FROM THE ISSUING AUTHORITIES

C L A S S I F I C A T I O N O F L I C E N S E S

County	Plenary Retail Consumption		Plenary Retail Distribution		Club		Limited Retail Distribution		Seasonal Retail Consumption		Number Surren- dered Revoked Expired	Number Licen- ses in Effect	Total Fees Paid
	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid			
Atlantic	444	\$ 167,848.51	60	\$ 20,926.04	10	\$ 1,025.00					8	506	\$ 189,799.55
Bergen	806	264,456.21	244	58,714.79	48	4,526.23	28	\$ 1,293.23	10	\$ 1,894.92	13	1123	330,885.38
Burlington	191	63,235.00	16	4,000.00	30	3,674.79	1	25.00			11	227	70,934.79
Camden	440	188,200.67	53	19,155.00	58	5,164.89			1	174.24	8	544	212,694.80
Cape May	124	50,725.68	11	3,150.00	6	600.00					1	140	54,475.68
Cumberland	77	22,897.12	7	1,700.00	26	2,750.00						110	27,347.12
Essex	1383	694,101.58	346	163,571.80	83	10,924.99	16	800.00			6	1822	869,398.37
Gloucester	110	30,800.00	10	1,575.00	6	400.00					3	123	32,775.00
Hudson	1599	654,973.20	270	106,361.90	48	6,040.73	45	1,749.11			23	1939	769,124.94
Hunterdon	80	20,502.41	1	300.00	1	150.00			1	115.54	2	81	21,067.95
Mercer	432	181,955.07	45	11,492.63	38	4,886.03			1	101.06	5	511	198,434.79
Middlesex	598	234,606.46	43	12,110.00	29	2,351.00	1	25.00	2	398.83	9	664	249,491.29
Monmouth	484	192,902.57	70	20,238.00	23	2,557.34	6	182.34	39	12,619.47	30	592	228,499.72
Morris	329	97,173.81	70	17,743.43	28	2,384.93	1	25.00	16	2,291.13	11	433	119,618.30
Ocean	168	76,901.19	27	10,665.00	7	700.00					1	201	88,266.19
Passaic	889	341,947.61	120	34,090.00	27	3,096.37	11	500.00	1	136.78	6	1042	379,770.76
Salem	50	15,750.00	4	550.00	10	875.00						64	17,175.00
Somerset	183	62,288.10	24	5,575.00	8	800.00					2	213	68,663.10
Sussex	152	31,690.78	12	1,915.00	3	159.86			5	750.00	10	162	34,515.64
Union	550	270,952.87	127	43,300.00	54	7,675.00	13	600.00	2	750.00	3	743	323,277.87
Warren	135	37,265.38	13	2,307.50	19	1,900.75	1	35.00	3	415.13	2	169	41,923.76
TOTALS	9224	\$3,701,174.22	1573	\$539,441.09	562	\$62,642.91	123	\$5,234.68	81	\$19,647.10	154	11409	\$4,328,140.00

ALFRED E. DRISCOLL, Commissioner.

Respectfully submitted,
E. B. Hock,
Deputy Commissioner.

5. APPEAL CASES - JULY 1, 1941 TO JUNE 30, 1943.

Cases undecided June 30, 1941.....	15
Cases filed for period July 1, 1941 to June 30, 1942.....	<u>77</u>

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DISPOSITION

Affirmed.....	42
Modification of penalty.....	2
Remanded.....	1
Reversed.....	10
Reversed on condition.....	4
Withdrawn.....	18
Not decided.....	<u>15</u>

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Cases undecided June 30, 1942.....	15
Cases filed for period July 1, 1942 to June 30, 1943.....	<u>83</u>

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DISPOSITION

Affirmed.....	51
Modification of penalty.....	1
Remanded.....	5
Reversed.....	15
Reversed on condition.....	1
Condition imposed modified.....	1
Dismissed - issue academic.....	1
Withdrawn.....	8
Not decided.....	<u>15</u>

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Edward J. Dorton
Deputy Commissioner and Counsel.

6. DISCIPLINARY PROCEEDINGS - SLOT MACHINE - 10 DAYS' SUSPENSION,
LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

FAIRVIEW POST NO. 71,)
 AMERICAN LEGION)
 2995 Mt. Ephraim Ave.,)
 Camden, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Club License CB-19 for)
 the fiscal year 1942-43, and now)
 holder of Club License CB-39,)
 issued by the Municipal Board of)
 Alcoholic Beverage Control of the)
 City of Camden.)

 Joseph Lipkin, Esq., Attorney for Defendant-Licensee.
 Edward F. Ambrose, Esq., Attorney for Department of Alcoholic
 Beverage Control.

BY THE COMMISSIONER:

The defendant has pleaded guilty to a charge alleging that it possessed a slot machine on its licensed premises, in violation of Rule 8 of State Regulations No. 20.

On April 29, 1943 an ABC agent discovered a pull handle jack-pot slot machine concealed in a cabinet on the licensed premises. The mere possession of such device on licensed premises constitutes a violation. Re American Mechanics Club, Inc., Bulletin 499, Item 5.

In view of the absence of any previous record, I shall suspend the license for ten days, less five days for the plea, or a net suspension of five days. Re American Mechanics Club, Inc., supra.

This proceeding, although instituted during the last licensing period, does not abate but remains effective against the defendant's renewal license for the current fiscal year. State Regulations No. 15.

Accordingly, it is, on this 6th day of July, 1943,

ORDERED, that Club License CB-39, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Fairview Post No. 71, American Legion, for premises 2995 Mt. Ephraim Avenue, Camden, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 A.M. July 12, 1943, and concluding at 2:00 A.M. July 17, 1943.

ALFRED E. DRISCOLL
Commissioner.

- 7. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENT IN LICENSE APPLICATION, IN VIOLATION OF R. S. 33:1-25 - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE, IN VIOLATION OF R. S. 33:1-52 - ILLEGAL SITUATION CORRECTED - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)
 JOHN J. WOODS)
 T/a WOOD'S CAFE)
 131 No. 11th Street)
 Camden, N. J.,)
 Holder of Plenary Retail Consumption License C-98 for fiscal year 1942-43 and transferred during said year to)
 JOHN J. WOODS and)
 JOHN DeLUCIA)
 for the same premises, and renewed for the present fiscal year by said)
 JOHN J. WOODS and JOHN)
 DeLUCIA, t/a WOOD'S CAFE,)
 now holding Plenary Retail Consumption License C-151 issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)
 -----)

CONCLUSIONS
AND ORDER

Bruce A. Wallace, Esq., Attorney for Defendants.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleaded guilty to charges which allege in substance that, in his application filed for the fiscal year 1942-43,

he falsely stated that no individual other than the applicant had any interest in the license applied for, whereas in truth John DeLucia had such an interest, said false statement being in violation of R. S. 33:1-25; and also that, from December 15, 1933 until June 7, 1943, he knowingly aided and abetted John DeLucia to exercise the rights and privileges of his successive licenses, in violation of R. S. 33:1-52.

On December 15, 1933 John J. Woods obtained a plenary retail consumption license for the premises in question. At the beginning of each fiscal year thereafter, to and including the year beginning July 1, 1942, he renewed the license in his own name. The files of the ABC Department show that at all times John DeLucia was an undisclosed partner in the licensed business.

On June 14, 1943, after the institution of these proceedings, the license then held by John J. Woods was duly transferred to John J. Woods and John DeLucia, and the license for the present fiscal year was renewed in the name of both parties. It appears, therefore, that the unlawful situation has been corrected.

As to penalty: Both individuals mentioned herein are elderly men who have conducted a business at the premises in question continuously since 1927. Both of them appear to have been fully qualified at all times to hold a liquor license. It is suggested that no penalty should be imposed herein because the violation was technical and because there was no intent to deceive the local issuing authorities. It is represented that the unlawful situation arose and was continued because each partner fully trusted the other partner, with the result that Woods applied for the original license and thereafter applied for the renewals thereof. However, applicants for liquor licenses must learn to answer each question in the application frankly and honestly. On June 1, 1942, in Bulletin 512, Item 9, I warned that in all disciplinary proceedings involving "fronts", created or continued after July 1, 1942, the penalties in cases of this kind would be increased. In this case, since it appears that both partners were at all times fully qualified, that they frankly admitted the violation, and that the situation had been corrected, I shall impose the minimum penalty and suspend the license for a period of ten days.

Although these proceedings were instituted during the last licensing term (which expired June 30, 1943), it does not in any wise abate but remains fully effective against the current renewal license for the 1943-44 term. State Regulations No. 15.

Accordingly, it is, on this 6th day of July, 1943,

ORDERED, that Plenary Retail Consumption License C-151 for the current term (1943-44), issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to John J. Woods and John DeLucia, t/a Wood's cafe, for premises 131 No. 11th Street, Camden, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A.M. July 12, 1943 and terminating at 2:00 A. M. July 22, 1943.

ALFRED E. DRISCOLL
Commissioner.

8. DISCIPLINARY PROCEEDINGS - CONCLUSIONS AND ORDER PREVIOUSLY ENTERED RECONSIDERED - 15-DAY SUSPENSION REIMPOSED.

In the Matter of Disciplinary Proceedings against)

MARTINS INCORPORATED)
27 Church Street)
Paterson, N. J.,)

ON RECONSIDERATION AFTER SUPPLEMENTAL HEARING CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-126 for the fiscal year 1941-42 and now holder of Plenary Retail Consumption License C-126 for the current fiscal year 1943-44, both issued by the Board of Alcoholic Beverage Control of the City of Paterson.)

Salvatore D. Viviano, Esq., Attorney for Defendant-Licensee.
Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

This matter comes before me following a supplemental hearing granted as a matter of grace on defendant's petition to reconsider Conclusions and Order entered in Re Martins Incorporated, Bulletin 490, Item 9. The order for a supplemental hearing was granted solely to afford defendant an opportunity to present further evidence. Re Martins Incorporated, Bulletin 491, Item 5. In the latter decision I said:

"A supplemental hearing will be scheduled solely for the purpose of permitting defendant to introduce additional evidence in its behalf. The case will be reconsidered upon the transcript of the evidence previously taken herein and the additional evidence submitted by defendant at the supplemental hearing without recalling the witnesses who previously testified on behalf of the Department. The petition is granted subject to the conditions set forth herein."

Despite the express terms of said order, defendant requested at the outset of the supplemental hearing that it be given an opportunity to cross-examine Chemist Blakeley and Junior Inspector Miller, two of the witnesses who had testified on behalf of the Department at the previous hearing. Neither of these witnesses was present at the supplemental hearing. The attorney for defendant stated that he desired to cross-examine the chemist concerning his evidence that Canadian Club Blended Canadian Whiskey usually contains artificial coloring. In the original Conclusions and Order I did not consider or mention the chemist's testimony as to coloring. I based my finding of guilt therein upon the chemist's testimony that the contents of the seized bottles were about 10⁰ higher in proof and higher in acids and solids than the contents of a genuine sample, and upon the chemist's opinion that "the contents of these two bottles are not Canadian Club Whiskey but that the bottles have been refilled with some other brand of whiskey."

In view of the aforesaid testimony as to the proof, acid content and solid content, which testimony defendant, although given an opportunity to do so, has neither attempted to rebut nor offered to

refute, no useful purpose could be accomplished by recalling the chemist for cross-examination solely as to his testimony concerning the coloring of the seized samples.

Defendant's attorney did not state any reason for seeking to cross-examine Junior Inspector Miller. This witness testified at the original hearing that he had seized from the back bar the two bottles mentioned in the charges when his field test showed that the contents of these bottles were over proof.

Defendant now complains because it has not had an opportunity to cross-examine the chemist and the Junior Inspector. I do not believe that defendant has been deprived of any of its legal rights. I base this conclusion upon the following facts: (1) defendant received due and legal notice of the original hearing and had a full opportunity to cross-examine these witnesses at that time; (2) the order granting the supplemental hearing clearly advised defendant that the witnesses who previously testified on behalf of the Department would not be recalled; (3) defendant was given an opportunity to present further evidence at the supplemental hearing. It did not subpoena the chemist or the Junior Inspector to testify at the supplemental hearing; (4) cross-examination of Chemist Blakeley as to the coloring of the contents of the seized bottle could not possibly change the result herein; and (5) Michael Spinella, General Manager of defendant-licensee, admitted that the two seized bottles were found on the back bar of the licensed premises.

In accordance with the terms of the order entered in Bulletin 491, Item 5, the case will be reconsidered upon the transcript of the evidence taken at the previous hearing and the additional evidence submitted by defendant at the supplemental hearing.

The proof introduced by defendant at the supplemental hearing consisted of the testimony of Michael S. Spinella, President of Martins Incorporated, to the effect that he had no personal knowledge of any tampering with the contents of the seized bottles because he was confined to a hospital and to his home from April 1941 to September 15, 1941. He further testified that he had specifically instructed all of his employees to abide by all the laws and rules and regulations of this Department. He denied that Michael Spinella was authorized to represent the corporation at the previous hearing although he admitted that Michael Spinella had been the manager of the licensed premises and in charge thereof during his absence.

At the supplemental hearing the manager, Michael Spinella, testified that he instructed the bartenders to serve the patrons what they asked for and nothing else, and that he had told every bartender not to refill any bottles. He further testified that he had no personal knowledge that either of these bottles had been tampered with. On behalf of defendant, the head waiter and a bartender both testified that another bartender, who had been discharged shortly before the alleged violation was discovered, had threatened to "get even" with the manager of defendant corporation. The other bartender was not produced at the hearing.

The most that has been shown from this testimony is that the officers and manager of defendant may not be personally guilty and that the discharged bartender may have tampered with the contents of the seized bottles. However, licensees are directly answerable for the violations of their employees upon the licensed premises. That principle was established as early as October 16, 1934, when Conclusions were entered in Re Kneller, Bulletin 49, Item 4. In that case the late Commissioner said:

"A licensee, when apprehended for violation of the law, may not hide behind the cloak of his employees. The license is his. So is the business. It is his duty to see to it that the business is conducted in accordance with the law. If unable to do so because of other interests, that is his personal lookout. It does not exonerate him from full responsibility for what goes on upon the licensed premises."

The principle has been uniformly applied since that time. Re Neidenburg, Bulletin 271, Item 4; Re Stolz, Bulletin 302, Item 1; Re Orback, Bulletin 406, Item 10; Re Heuring, Bulletin 445, Item 12.

Defendant apparently contends that the guilt of defendant has not been established because the evidence does not establish "criminal intent." The decisions cited by counsel for defendant are decisions in criminal cases in which it has been held that guilty intent must be established. This rule, however, does not apply in proceedings to revoke or suspend a license. In 33 C. J. 567, the correct rule is stated as follows:

"In such a proceeding it is no defense that the alleged unlawful act was committed by the bartender or other employee of the licensee without the knowledge and contrary to his general orders, for it is his duty to exercise such a close supervision of his business as to render the commission of unlawful acts impossible."

See also Halsted v. New Jersey, 41 N.J.L. 552; State v. Silverman, 116 N.J.L. 242; Garford Trucking Inc. v. Hoffman, 114 N.J.L. 522.

The testimony given by Chemist Blakeley establishes that the seized alcoholic beverages were prima facie illicit. P.L. 1939, c. 177. Since this testimony has not been refuted by defendant, I find that defendant possessed illicit alcoholic beverages in violation of R. S. 33:1-50. Hence it follows that defendant is guilty as to charge (1).

In my opinion the proof is also sufficient to show the guilt of defendant as to charge (2). The natural inference to be drawn from the evidence is that these bottles were refilled by an agent or employee of defendant. However, even if the proof is not sufficient to sustain charge (2), defendant has suffered no injury thereby. The two charges arose out of the same facts. In cases of this character it has been the practice of the Department to impose a single penalty upon the finding of guilt upon both charges. Re Cutter, Bulletin 479, Item 12. In the present case a fifteen-day penalty would have been imposed on a finding of guilt as to the first charge alone.

As to penalty: The minimum penalty for possession of illicit liquor where there are no aggravating circumstances and the defendant has no previous record has consisted of a suspension of the license for a period of ten days. As noted in the Conclusions previously filed, defendant's license was suspended in 1941 for a period of five days for selling alcoholic beverages during prohibited hours and hindering and failing to facilitate an investigation by ABC agents. The suspension in that case appears to have been wholly inadequate. Where a licensee has been penalized for a prior dissimilar violation, the Department has heretofore imposed a fifteen-day suspension in a case of this kind. Re Rosenberg, Bulletin 470, Item 1. The suspension for a period of fifteen days originally imposed herein is not unreasonable under the circumstances of this case.

The finding of guilt as to charges (1) and (2) is hereby re-affirmed. The original fifteen-day penalty will be reimposed herein.

Although this proceeding was instituted during a previous licensing term, it does not in any wise abate, but the suspension imposed herein remains fully effective against the current renewal license for the 1943-44 term. State Regulations No. 15.

Accordingly, it is, on this 8th day of July, 1943,

ORDERED, that Plenary retail Consumption License C-126 for the fiscal year 1943-44, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Martins Incorporated, for premises 27 Church Street, Paterson, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 3:00 A.M. July 13, 1943, and terminating at 3:00 A.M. July 28, 1943.

ALFRED E. DRISCOLL
Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - PREVIOUS RECORD - 30 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

MARTINS INCORPORATED)
27 Church Street)
Paterson, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-126 for the fiscal year 1942-43 and now holder of Plenary Retail Consumption License C-126 for the fiscal year 1943-44, both issued by the Board of Alcoholic Beverage Control of the City of Paterson.)
-----)

Salvatore D. Viviano, Esq., Attorney for Defendant-Licensee.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to the following charges:

"1. On or about January 30, 1943, you sold alcoholic beverages at your licensed premises to Rose ---, a minor, in violation of R. S. 33:1-77.

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

"3. On February 4, 1943, and on divers dates prior thereto, more particularly on or about January 24, 1943, you sold alcoholic beverages at your licensed premises to Theresa ---, a minor, in violation of R. S. 33:1-77.

"4. On or about the dates last aforesaid, you sold, served and delivered, and allowed, permitted and suffered the service and delivery of alcoholic beverages at your licensed premises to Theresa ---, a person under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such person upon the licensed premises, in violation of Rule 1 of State Regulations No. 20."

Rose ---, who was then sixteen years and ten months of age, is the same young lady who, on the evening of January 30, 1943, was served an alcoholic beverage in the licensed premises conducted by Anthony Cusak in Clifton, New Jersey. Re Cusak, Bulletin 570, Item 12. She testified herein that she visited defendant's premises with a male companion, who was then forty-one years of age. She states that she and her male companion entered defendant's premises at about 11:00 P.M. on January 30, 1943; that the premises were crowded, and that they took seats at the bar. She further testified that, when her male companion asked her what she wanted, she replied, "The same as before", and that he thereupon ordered an "Imperial and coke", which were placed on the bar by the bartender and passed to her by her companion; that she consumed these drinks and thereafter consumed three or, at the most, four drinks of the same kind; that no one in the licensed premises questioned her as to her age.

Her male companion, who was a rather reluctant witness, testified that they entered the licensed premises shortly after midnight on January 30, 1943 and remained there until the premises closed at 3:00 A.M. He says that, during that time, Rose was drinking something which he assumed the bartender put on the bar; that he did not order any drinks for her but told her to order what she pleased; that he bought drinks for others in the premises and purchased about \$25.00 worth of "something" during the evening. He further said that Rose was not staggering when she left the premises but that she was a bit hysterical. He also said that no one in the licensed premises questioned Rose as to her age.

Defendant has offered no proof to rebut the testimony given by these two witnesses. Apparently it contends that the testimony of the young lady should not be believed because it is uncertain and because of certain discrepancies between her testimony and that given by her companion. It is true that the young lady did not definitely identify the bartender who served the drinks. There were four bartenders on duty. The place was crowded. However, her testimony is definite and convincing that she was served at least three or four drinks of alcoholic beverages, and this is corroborated by the testimony as to her condition after spending about three hours on the licensed premises. The discrepancy between the testimony of the two witnesses is concerned mainly with the number of times the young lady danced with patrons in the premises, whether or not she was served food at a table, and whether she or her companion ordered the drinks. I have examined all the testimony carefully and find nothing therein which would lead me to conclude that I should not believe her direct testimony that, on the evening in question, alcoholic beverages were sold and served to her by an agent of the licensee and that she consumed these alcoholic beverages on the licensed premises.

Defendant further contends that there is no adequate proof that the young lady is a minor. She testified that she was born on March 24, 1926, in East Rutherford, and gave her father's name and her mother's maiden name. A person is competent to testify as to his own age irrespective of the consideration that the fact of age is one of the essentials necessary to be established in order to constitute the crime charged. State v. Huggins, 83 L. 43; State v. Girone, 91 L. 498. It is to be noted that these proceedings, while penal in nature, are not criminal. Moreover, a certified copy of the birth certificate of a person bearing the same name has been introduced into evidence. The certificate shows that this person was born on March 24, 1926, and that the name of the father and maiden name of the mother correspond with the testimony given by the witness. The birth certificate is prima facie evidence of the facts therein contained. R. S. 3:98-14. In the absence of any evidence to the contrary, I find that it has been established that the young lady was sixteen years and ten months of age on January 30, 1943.

I find the defendant guilty as to charges (1) and (2).

As to charges (3) and (4): Theresa --- testified that she was born on February 17, 1924, and hence was less than nineteen years of age at the time these alleged violations occurred. She testified that, on January 24, 1943, at some time between 8:00 P. M. and midnight, she visited defendant's premises and purchased three drinks of Black and White Scotch and soda from William Halupka, a bartender. During the course of a subsequent investigation, Halupka admitted to one of the ABC investigators that this young lady had been in defendant's premises on January 24, 1943, but stated that he did not remember what he had served her. At the hearing herein, Halupka stated that he had "never seen the girl before." The evidence as to the alleged sale and consumption on January 24th is meager but, in view of Halupka's admission to the investigator, which I believe rather than his testimony given at the hearing, I think there is sufficient in the record to corroborate the young lady's testimony that she visited defendant's premises on January 24th. Under these circumstances, I believe her further testimony that Halupka sold her three drinks of alcoholic beverages at that time. Theresa --- testified that she again visited defendant's premises on the early morning of February 4, 1943, and that she purchased four or five drinks of Sauterne wine from Franklin Coombes, a bartender. The fact that the young lady was in defendant's premises at that time was corroborated by the testimony of Marie Conroy and William Beck, who testified on behalf of defendant. Coombes was not produced to deny the sale apparently because he has disappeared to escape prosecution for a criminal attack upon Theresa on this same morning. Marie Conroy, William Beck and William Halupka testified on behalf of defendant that, on the morning in question, Franklin Coombes was not acting as bartender but was seated at the bar with Theresa ---. The other bartenders were not produced as witnesses by defendant.

Defendant has produced no substantial evidence to rebut the testimony of Theresa ---. Apparently it relies, at least to some extent, upon the contention that there is not sufficient evidence to establish that this young lady was a minor. She testified as to her age and, for the reasons given above, her testimony was admissible. Moreover, a certified transcript of a certificate of birth was introduced into evidence, which shows that a person of the same name was born on February 17, 1924. I conclude that the evidence is sufficient to establish that the young lady was less than nineteen years of age on January 24, 1943 and February 4, 1943.

I find defendant guilty as to charges (3) and (4).

As to penalty: In the absence of aggravating circumstances or a previous record, the usual penalty imposed where a licensee has been found guilty of selling alcoholic beverages to a minor is ten days. In view of the prior record of the licensee, which is set forth in Re Martins Incorporated, Bulletin 576, Item 8, decided herewith, and the age of the minors, I shall suspend the license for a period of thirty days. Defendant is hereby warned that any further violations of any character may well result in the revocation of its license. The suspension herein imposed will take effect at the termination of the suspension imposed in the case decided herewith.

Accordingly, it is, on this 8th day of July, 1943,

ORDERED, that Plenary Retail Consumption License C-126, for the fiscal year 1943-44, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Martins Incorporated, for premises 27 Church Street, Paterson, be and the same is hereby suspended for a period of thirty (30) days, commencing at 3:00 A.M. July 28, 1943, and terminating at 3:00 A.M. August 27, 1943.

ALFRED E. DRISCOLL
Commissioner.

10. MILITARY FORCES - REGULATIONS NO. 37 - HOURS OF SALE TO MEMBERS OF ARMED FORCES IN THE CITY AND TOWNSHIP OF BURLINGTON RESTRICTED.

July 8, 1943

TO ALL LICENSEES IN THE CITY OF BURLINGTON AND TOWNSHIP OF BURLINGTON:

The Military authorities, District No. 5, Second Service Command, by order of July 6, 1943, have established the hour of 12:00 midnight as the hour after which alcoholic beverages are not to be sold to any military personnel in the City of Burlington and Township of Burlington.

Notice of this operative order is hereby sent to you pursuant to Rule 3 of Regulations No. 37 of this Department. On and after receipt of this notice, all licensees in the City of Burlington and Township of Burlington are strictly bound by Rule 2 of Regulations No. 37 as follows:

- "2. Whenever a properly authorized officer or agency of the armed forces of the United States has issued an operative order, effective in a designated area, forbidding sales of alcoholic beverages to any person wearing the uniform of the armed forces of the United States during certain hours specified in such order, no licensee within said area shall, during those hours, sell, serve or deliver, or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, directly or indirectly, to any person wearing the uniform of the armed forces of the United States or of an Allied Nation, or allow, permit or suffer any such person to consume any alcoholic beverage upon the licensed premises."

I call your particular attention to the fact that the curfew, pursuant to Rule 2 as set forth above, applies to all persons wearing the uniform of the armed forces of the United States or of an Allied

Nation (whether soldier, sailor, Marine, Coast Guardsman, or members of the Women's Auxiliary of said branches of service). Violation of this Rule is cause for suspension or revocation of your license. Aside from your responsibility to this Department by virtue of Regulations No. 37, it is expected that all licensees will cooperate to the fullest with our military and naval authorities.

ALFRED E. DRISCOLL
Commissioner.

11. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - VARIATION IN COLOR, ACIDS AND SOLIDS - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

ULRICH LAENGLE)
401 - 68th Street)
Guttenberg, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-12 for the fiscal year 1942-43 and now holder of Plenary Retail Consumption License C-12 for the current (1943-44) year, issued by the Mayor and Board of Council of the Town of Guttenberg.)
-----)

John J. Meehan, Esq., Attorney for Defendant-Licensee.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to a charge alleging, in substance, that he possessed an illicit alcoholic beverage in violation of R. S. 33:1-50.

This illicit alcoholic beverage was discovered on the licensed premises and consisted of a natural colored straight whiskey of 86.8 proof in a 4/5th quart bottle labeled "Wilson 'That's All' Blended Whiskey 86.8 Proof." A comparison of the illicit liquor with the contents of a full bottle of genuine Wilson "That's All" Blended Whiskey 86.8 Proof, submitted by the licensee, shows the following:

	<u>Proof</u>	<u>Color</u>	<u>Acids</u>	<u>Solids</u>
Illicit beverage	86.8	Natural	60	193.2
Genuine beverage	86.8	Added artificial	33	235.4

I am forced to conclude that no part of the original contents of the bottle seized remained in the bottle at the time of its seizure. This is not a case of dilution but of real substitution. The seized bottle contained a naturally colored straight whiskey; the genuine, an artificially colored blend.

The defendant pleads that he, personally, is in no way guilty of the substitution. However, under the circumstances, and in view of my many rulings that the licensee must assume full responsibility for the bona fides of the liquor found on his licensed premises and be held strictly accountable therefor, I must provide for a suitable

penalty. There being no prior record, I shall suspend the license for ten days. Re Fuccile, Bulletin 574, Item 8.

Accordingly, it is, on this 12th day of July, 1943,

ORDERED, that Plenary Retail Consumption License C-12, heretofore issued by the Mayor and Board of Council of the Town of Guttenberg for the current fiscal year to Ulrich Laengle for premises 401-68th Street, Guttenberg, be and the same is hereby suspended for ten (10) days, commencing at 3:00 A.M. July 14, 1943, and terminating at 3:00 A.M. July 24, 1943.

Alfred E. Duizend
Commissioner.