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

BULLETIN 725 AUGUST 20, 1946.

TABLE OF CONTENTS

ITEM

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

BULLETIN 725 AUGUST 20, 1946.

1. DISCIPLINARY PROCEEDINGS - CHARGE OF SALE OF ALCOHOLIC BEVERAGES TO MINORS DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against

JAMES P. CARTWRIGHT
T/a CARTWRIGHT'S INN
W. S. Highway U. S. 9-4
Freehold-Adelphia Road
Freehold Township, N. J.,

Holder of Plenary Retail Consumption License C-3 for the 1945-46 and 1946-47 licensing years, issued by the Township Committee of the Township of Freehold.

CONCLUSIONS AND ORDER

Sidney Simandl, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

The defendant pleaded not guilty to charges alleging that he sold and served alcoholic beverages to minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

These proceedings resulted from the questioning by police of two minors, Kenneth --- and John ---, concerning an alleged incident of immoral conduct which occurred during the early morning hours of Sunday, October 28, 1945. During their questioning, the minors told the police that, together with a female companion, they had visited several taverns between 7:30 p.m. on Saturday, October 27, 1945, and 2:00 a.m. of the following morning.

One of the places referred to was that of this defendant. The minors testified that they and their female companion arrived at the premises at about 9:00 p.m. and stayed there about four hours. They also testified that one of the minors entertained the patrons by playing a guitar and that he was compensated with several drinks of whiskey, for which he did not pay. The other minor testified that he had several drinks of beer.

There is serious question in this case as to whether the alleged drinking took place in the premises of this defendant. The female testified that she thought they had visited the "Clairmont" and not Cartwright's. When asked whether she went with the minors to the defendant's premises, she stated, "I am not sure. I could not say that I was." Neither the minors nor the girl was able to identify the licensee or any of his employees as the persons who had served them with beverages on the night in question.

The defendant denies that they had ever visited his premises. In addition, he produced four reputable and responsible witnesses, all of whom testified that they were on the defendant's premises during the time that the minors alleged they were there. They flatly denied that the minors and the girl were at the defendant's premises or that anyone played a guitar at that time. Although the events related by the minors could conceivably have taken place, in view of the unusual feature of the alleged playing of the guitar together with the female's uncertainty as to the premises and the failure to identify the persons who were supposed to have served the minors, I find from the record that the prosecution has not sustained the burden of proving that they took place at the defendant's premises.

The charges must, therefore, be dismissed.

Accordingly, it is, on this 13th day of August, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

2. DISCIPLINARY PROCEEDINGS - CHARGE OF SALE OF ALCOHOLIC BEVERAGES TO MINORS DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against

ANNA A. WOERNER
T/a POP'S INN
Box 93, River Avenue
Lakewood, N. J.,

Holder of Plenary Retail Consumption License C-1 for the 1945-46 and 1946-47 licensing years, issued by the Township Committee of the Township of Lakewood.

CONCLUSIONS AND ORDER

William C. Egan, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

The defendant pleaded not guilty to charges alleging that she sold and served alcoholic beverages to minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

This is a companion case to Re Cartwright, Bulletin 725, Item 1, decided simultaneously herewith. The only testimony given in this case by the two minors, and their female companion, upon which all three agreed, is that they visited the defendant's premises on Saturday, October 27, 1945. There is wide divergence concerning the time of their arrival, the kind of drinks consumed, and the manner in which they were served. Neither of these three witnesses could identify the person who had served them.

The female, who is over twenty-one years of age, testified that she consumed three hamburgers and "maybe that night they didn't have any coffee and I may have had a beer". As to the boys, she stated, "I don't think they wanted anything to drink."

Kenneth ---, one of the minors, testified that he had a "highball", but since he was at the juke box at the time, he was unable to state how it was delivered to the table at which they had seated themselves when they entered.

The other minor, John ---, testified that he had a glass of beer which was served to the table by a waitress, whom he was, however, unable to identify. He further stated that he did not order any drink for Kenneth ---, but that "I asked Kenney to order his own drink," and added, "I think it was a highball."

Both the defendant and the waitress denied that the three persons had visited the defendant's premises on the occasion in question or upon any other time.

After carefully reviewing the entire record in this case, I am forced to the conclusion that the testimony of the two minors and the female companion is so uncertain and inconsistent that it must result in a finding that the charges have not been proven by a preponderance of the evidence and, therefore, they must be dismissed.

Accordingly, it is, on this 13th day of August, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

3. DISCIPLINARY PROCEEDINGS - CHARGE OF SALE OF ALCOHOLIC BEVERAGES TO MINORS DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against CHARLES W. VAN SCHOICK T/a VILLAGE INN Highway 33 Howell Township P. O. Freehold, R.D. 2, N.J., Holder of Plenary Retail Consumption License C-11 for the 1945-46 and 1946-47 licensing years, issued by the Township Committee of the Township of Howell.	CONCLUSIONS AND ORDER

Samuel Sagotsky, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

The defendant pleaded not guilty to charges alleging that he sold and served alcoholic beverages to minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The two minors and their female companion are the same individuals involved in Re Cartwright, Bulletin 725, Item 1, and Re Woerner, Bulletin 725, Item 2, both decided today. As in the latter case, the stories told by these witnesses herein are in wide disagreement.

Kenneth --- testified that, although he drank only a Coca Cola at the defendant's premises, he ordered and paid for two glasses of beer at the bar, and delivered the drinks to their table. He was unable to state whether these drinks were consumed.

John --- testified that, when they entered the premises, he danced with the girl and, upon returning to the table, found a glass of beer there, which he drank. He did not recall whether either of the other two persons had anything to drink. Moreover, he claimed that his drink was paid for out of change which he "threw.....down on the table".

The girl denied that she or either of the minors had consumed any beverages at these premises. She stated that "the bar was very crowded and (we) didn't get any drinks".

Neither of the minors, who apparently were under the influence of liquor when they entered this tavern, were able subsequently to identify either the licensee or his son, both of whom were behind the bar on the occasion in question, as the person who allegedly served the drinks.

The mere recital of the foregoing makes it apparent that the evidence is so conflicting and untrustworthy that no finding of guilt may be made thereon. Under the circumstances, the charges must be dismissed.

Accordingly, it is, on this 13th day of August, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION DURING PROHIBITED HOURS - FAILURE TO CLOSE LICENSED PREMISES DURING PROHIBITED HOURS, IN VIOLATION OF MUNICIPAL REGULATION - SALE OF ALCOHOLIC BEVERAGES IN PREMISES NOT INCLUDED IN THE LICENSE - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS.

In the Matter of Disciplinary Proceedings against

MRS. BRONISLAWA LOJKO
T/a GOLDEN SLIPPER
189 Burnet Street
New Brunswick, N. J.,

Holder of Plenary Retail Consumption License C-35 for the 1945-46 and 1946-47 licensing years, issued by the Board of Commissioners of the City of New Brunswick.

CONCLUSIONS AND ORDER

John A. Lynch, Esq., Attorney for Defendant-licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

The defendant was served with charges alleging that:

(1) She sold alcoholic beverages in original containers for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulations No. 38;

(2) She sold alcoholic beverages on a Sunday during prohibited and hours (12:00 a.m. to 1:00 p.m.), and failed to keep her (3) licensed premises closed during such hours, in violation of local regulation; and

(4) She sold alcoholic beverages in premises not included in her license, in violation of R. S. 33:1-2 and R.S. 33:1-50(a).

By her non vult plea, the defendant admits that, on Saturday, February 9, 1946, at about 10:27 p.m., she sold three bottles of beer to an ABC agent. Rule 1 of State Regulations No. 38 prohibits the sale of packaged liquor for off-premises consumption after 10:00 p.m. on weekdays and at all times on Sunday.

The defendant pleaded not guilty, however, to selling alcoholic beverages on Sunday, February 17, 1946. As to this allegation, an ABC agent testified that he entered a delicatessen store, contiguous to the tavern, at about 11:45 a.m. on the Sunday morning in question.

Both stores are owned and operated by the defendant. Upon entering, the agent approached an elderly man seated behind the counter, who is apparently employed as a porter and handyman by the defendant. This man pulled a cord which rang a bell located in the tavern. In response to this ring, the bartender entered the delicatessen store, and after conversing with the agent, re-entered the tavern and then returned with a bottle of Gold Coin whiskey, which he sold to the agent for $2.50. In a written statement obtained from the bartender on that day, he admitted the sale and also admitted that he was aware of the provisions of State Regulations No. 38.

The defense is predicated solely on the bartender's testimony given at the hearing to the effect that the bottle of Gold Coin whiskey sold to the agent actually belonged to the bartender and was not sold on behalf of the defendant. He testified that, several days prior to the day of the sale, he had taken the whiskey bottle from the tavern with the defendant's permission to take along on a contemplated fishing trip. He had kept this bottle in his room over the tavern and he stated that it was this bottle which he had sold to the ABC agent.

This story is not worthy of belief. If it were true, it is indeed strange that this information was not included in the statement given to the agent on the day of the violation. Furthermore, the record shows that the defendant was well-stocked with Gold Coin whiskey, so that there would appear to be no necessity for the bartender to have set aside a bottle of that whiskey several days before its intended use.

I find the defendant guilty of the violations occurring on Sunday, February 17, 1946, as charged.

The only adjudicated violation against the defendant's record is a two-day suspension in December, 1943, resulting from her guilty plea to a charge of maintaining mislabeled beer spigots. Under all the circumstances, including the non vult plea to the violation of February 9, 1946, I am of the opinion that a penalty of thirty days should be meted out for the violations herein.

Although this proceeding was instituted during the 1945-46 licensing period, it does not abate but remains fully effective against the renewal license for the licensing year 1946-47. State Regulations No. 16.

Accordingly, it is, on this 9th day of August, 1946,

ORDERED, that Plenary Retail Consumption License C-35, issued by the Board of Commissioners of the City of New Brunswick to Mrs. Bronislawa Lojko, t/a Golden Slipper, for premises 189 Burnet Street, New Brunswick, be and the same is hereby suspended for a period of thirty (30) days, commencing at 2:00 a.m. August 14, 1946, and terminating at 2:00 a.m. September 13, 1946.

ERWIN B. HOCK
Deputy Commissioner.

5. APPELLATE DECISIONS - KOWALSKI v. HARRISON (CASE NO. 2).

Case No. 2.)
BENJAMIN J. KOWALSKI,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS AND ORDER
TOWN COUNCIL OF THE TOWN OF HARRISON,)
Respondent)
- - - - - - - - - - - - - - - - - -).

Russel E. Greco, Esq., Attorney for Appellant.
Michael J. Bruder, Esq., Attorney for Respondent.

This matter was the subject of a prior appeal. See Kowalski v. Harrison, Bulletin 706, Item 15.

The application herein had been filed on January 30, 1946, and the sole question considered in the prior appeal was whether the application should be considered as an application for renewal under the definition thereof in the Statute, R. S. 33:1-96. The contention of the local issuing authority that it was not an application for renewal was confirmed, but the appeal was remanded for further consideration on its merits as an application for a new license.

Upon reconsideration, pursuant to the prior order entered herein, the application was denied for the stated reason that respondent "decided it was, in its judgment, to the best interests of the public to issue no further new licenses for the sale of alcoholic beverages in the Town of Harrison."

An additional reason for the denial is, to wit, "that it is the policy of the Mayor and Council (respondent) not to issue any new licenses."

The application in question is not affected in any way by the provisions of P. L. 1946, ch. 147, because it was filed prior to April 1, 1946. The issues herein must be decided, therefore, upon the law and the precedents as they existed prior to the enactment of the State Limitation Act.

Appellant alleges that there is now in effect an ordinance, duly adopted by respondent, fixing a limitation on the number of plenary retail consumption licenses to be issued in the Town of Harrison and that a vacancy exists in the quota fixed in said ordinance. It appears from the proof, however, that no such ordinance was ever adopted.

However, in June, 1938, the respondent Town Council adopted a resolution instructing the Corporation Counsel to prepare such a limitation ordinance and declared therein that "pending the preparation and adoption of such an ordinance, no new license to sell or vend alcoholic beverages of any type shall be issued". Such resolutions, while not effective to regulate the number of licenses (such regulation must, since July 1, 1937, be by ordinance, as provided in R. S. 33:1-40), have heretofore consistently been considered evidential of a "policy" and, as such, substantially respected by the State Commissioner. Spezio v. Jamesburg, Bulletin 492, Item 10.

There is sufficient testimony to show that such "policy" has been consistently followed by the respondent Town Council since the adoption of the resolution in 1938. Further, there is sufficient testimony to disclose a policy of the local issuing authority to reduce the number of licenses outstanding. At the present time there would appear to be four less licenses outstanding than in 1938. The policy adopted appears to be wholly reasonable. Seventy-nine plenary retail consumption licenses appear more than sufficient to take care of a population of 14,000, as of the last Federal census. (The 1946 Act, Chapter 147, Laws of 1946, provides a limitation of one such license for each 1,000 of population.) Thus it would seem, generally, that the public need of the Town of Harrison is amply taken care of.

As to the specific neighborhood and the premises proposed as a location for the license: it appears that the premises consist of the first floor of a building, approximately 20' x 40', and an addition in the rear 25' x 50'. These premises had for approximately forty years been used as a tavern and recreation hall. There are, it would seem, several other taverns on Third Street within a distance of three blocks. Appellant's proposed premises are approximately only 100 feet from the nearest other tavern. One of the nearby taverns has a recreation hall attached. No one other than the appellant and his landlord testified as to any need for the license at the proposed location. The fact that a particular property has been operated as a tavern for a long period of time neither entitles it to a preference nor excepts it from the operation of a reasonable policy of limitation. Spezio v. Jamesburg, supra.

In an appeal from denial of a license the burden of proof in establishing that public convenience and need will be best served by the issuance of the license rests upon the appellant. Gorcica v. Wallington, Bulletin 659, Item 10. This burden the appellant has failed to sustain. In fact, there is no proof that the established licensed places are insufficient to take full care of any possible public need or convenience. Clayton v. Brielle, Bulletin 664, Item 12. I cannot find that respondent was arbitrary, discriminatory or unreasonable in denying the license. Johnson v. Winslow, Bulletin 711, Item 1.

The action of the respondent local issuing authority is affirmed.

Accordingly, it is, on this 9th day of August, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

6. APPELLATE DECISIONS - FALKNER v. EGG HARBOR TOWNSHIP.

LBERT FALKNER,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS AND ORDER
TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF EGG HARBOR,)
Respondent)

Sidney Simandl, Esq., by William T. Cahill, Esq.,
Attorney for Appellant.
William Charlton, Esq., Attorney for Respondent.

Appellant was found guilty by respondent of having given a false answer in his application for a 1944-1945 plenary retail consumption license. Respondent revoked appellant's license, effective April 3, 1945. As a result, appellant's premises were closed until April 13, 1945, when he filed his appeal and thereafter obtained a stay of the order of revocation pending determination of the appeal.

Appellant appeals on the ground (1) that he is "innocent of the charge of which he was convicted", (2) the finding of guilt was the result of bias and prejudice on the part of respondent, (3) the finding of guilt was not based on the evidence produced at the trial below, but was a result of a predetermination to revoke the appellant's license, and (4) the penalty was unreasonable, unjustified and unduly harsh.

The charge that the trial below was not fair in that appellant was not afforded a full opportunity to be heard, may now be disregarded in that on appeal appellant was granted a trial de novo and given every opportunity to present testimony and to be represented by competent counsel.

The facts disclose that the appellant signed and filed an application for a 1944-1945 plenary retail consumption license in which he answered "No" to Question 35, reading as follows: "Have you or has any person mentioned in this application ever been convicted of a violation of a Federal or State law concerning the manufacture, sale, possession, distribution or transportation of alcoholic beverages? If so, state details as to each conviction, nature of the crime, court in which the conviction was entered, date thereof and sentence imposed."

Appellant was in fact tried and convicted in 1932 for a violation of the National Prohibition Law and served ten days in the Atlantic County jail.

I can dispose of the conviction by agreeing with the stipulations of the parties herein. It was not aggravated or repeated, resulted in the ten-day sentence just mentioned imposed by a judge of the United States District Court, and does not involve moral turpitude. Re Tansky, Bulletin 588, Item 9. Appellant, therefore, was not mandatorily disqualified by such conviction. R. S. 33:1-25.

The fact that appellant was not disqualified by his conviction did not, of course, excuse him from making a frank and full disclosure thereof in each application filed by him for a license. All of the questions in an application relate to material facts and must be truthfully answered. Failure to give an accurate answer to a question in an application is a proper ground for suspension or revocation of a license. R. S. 33:1-25.

Appellant's false answer, therefore, placed his license in jeopardy.

There are in this case, however, a number of facts that are disturbing. The Township has a small population (about 3,000 in 1930). Appellant at the time he was sentenced to serve ten days in jail was operating the premises now operated by him. He testified that his conviction and sentence was generally known by the residents of the Township. I believe this to have been the case.

Appellant has held a plenary retail consumption license in the respondent Township since 1933, except for two years when his premises were leased to another party who applied for and was granted a license for the premises.

With the exception of the application filed in 1933, all of the appellant's applications had been prepared for him by the Township Clerk and each contains the false answer appearing in the 1944-1945 application. The Township Clerk is not sure whether he prepared the 1933 application. Appellant, on the other hand, is sure that his wife prepared the 1933 application and that it disclosed his conviction, which was then a matter of considerable notoriety. Unfortunately, the 1933 application does not appear to have been preserved by the respondent Township. On the basis of the testimony, I find that the 1933 application was properly prepared and disclosed the conviction.

The Commissioner has on many occasions stated that municipal clerks should not prepare applications for licensees. It is a practice fraught with danger and should be discontinued.

Under the circumstances in this case, I have reached the conclusion that the respondent, despite the false answer in the application, granted the license with full knowledge of the facts. I do not believe the Township Committee was misled in any way.

Appellant was previously convicted, after charges had been brought on the recommendation of the State Department of Alcoholic Beverage Control, of mislabeling a beer tap. This conviction in January, 1945 is cited as a first offense and the present conviction as a second offense in an endeavor to show that the revocation was not unduly severe. Both charges could very well have been brought at the same time. It is well established that to constitute a second offense there must be a conviction followed by a locus poenitentiae or chance to repent and then a second violation.

On the record thus presented, I would, under normal circumstances, affirm the finding of guilt -- despite the part played by the Clerk and the knowledge on the part of the Township Committee. The order of revocation, however, was unnecessarily severe and should be reduced to a minimum period of ten days. Re Tumulty, Bulletin 558, Item 2. Since appellant's premises were closed for at least ten days as a result of the proceedings below, I shall consider that period to be the suspension period imposed herein.

Despite the respondent's order of revocation mandatorily disqualifying the appellant from holding any license for two years (R. S. 33:1-31), respondent appears to have granted appellant renewals of his license for 1945-1946 and 1946-1947. In the absence of an order by the Commissioner terminating the appeal and reversing or modifying the order of revocation, respondent should not have granted the 1945-1946 license. See also as of some interest Falkner v. Egg Harbor Township and Gill, Bulletin 665, Item 7.

The conduct of both parties to the appeal pending its determination is not free from fault. I will, however, under all the circumstances herein, presume that such fault was the result of ignorance of the law rather than of any desire to circumvent the Commissioner's authority.

The Commissioner has traditionally taken appropriate action to protect against bias and prejudice. Licensees should not fear for their rights or seek to protect themselves by improper conduct. To do so is dangerous. Under all the circumstances, I shall, although with some reluctance, modify the penalty herein as indicated above.

Accordingly, it is, on this 12th day of August, 1946,

ORDERED, that the action of respondent in finding appellant guilty as charged is affirmed and the action of respondent in revoking appellant's license is modified to a suspension of appellant's license for ten days, which suspension has been served.

ERWIN B. HOCK
Deputy Commissioner.

7. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT ALCOHOL, TOGETHER WITH BEER, WHISKEY AND HOME MADE WINE, MANUFACTURED PURSUANT TO PERMIT, ORDERED FORFEITED.

In the Matter of the Seizure on June 18, 1946, of about 400 gallons of home made wine, a 5-gallon can of alcohol, 90 bottles of beer and 3 bottles of other alcoholic beverages, at 32 Butler Street, in the City of Trenton, County of Mercer and State of New Jersey.	Case No. 6997 ON HEARING CONCLUSIONS AND ORDER

Harry Castelbaum, Esq., appearing for the Department of Alcoholic Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of home made wine and other alcoholic beverages, described in a schedule attached hereto, seized on June 18, 1946 at 32 Butler Street, Trenton, N. J., constitute unlawful property and should be forfeited.

On June 18, 1946, at about 10:30 a.m., ABC agents, checking a specific complaint that illicit alcoholic beverages were being stored there, were admitted by Mrs. Filomena Cristiano into the kitchen of her apartment at the premises in question. A pitcher of wine, and wine and whiskey glasses were on the table. A quantity of beer was on steps leading to the cellar. Mrs. Cristiano told the agents that she gave drinks of alcoholic beverages to persons to whom she served meals.

A one-half gallon jug containing alcohol and anisette flavoring was then found behind the kitchen range. Mrs. Cristiano told the agents that she had purchased the alcohol from a man unknown to her, and that she had manufactured the anisette. Further search disclosed two bottles of whiskey in a bedroom, and a five-gallon can with about a gallon of alcohol in the bathroom. There were no tax stamps or other indicia of tax payment on the can. Mrs. Cristiano at first

denied, but later admitted that she was the owner of this alcohol. She said that she had purchased three or four five-gallon cans of alcohol from the same man since January, 1946, and that she sold alcohol for $12.00 a gallon and gave the agents a signed statement to this effect.

Mrs. Cristiano was arrested, charged with the unlawful sale of alcoholic beverages and with possessing illicit alcoholic beverages and is presently awaiting action of the Grand Jury. She was also charged with possessing illicit alcoholic beverages in violation of the local ordinance and has since pleaded guilty and has been fined $100.00.

The agents seized the alcoholic beverages above described, as well as about 400 gallons of home made wine and a quantity of beer which was in the cellar. Mrs. Cristiano had obtained a permit on November 7, 1945 from the State Department of Alcoholic Beverage Control authorizing her to manufacture not more than 200 gallons of wine for home consumption.

When the matter came on for hearing, pursuant to R. S. 33:1-66, no one appeared to oppose forfeiture of the seized alcoholic beverages. Mrs. Cristiano's attorney had previously advised that she did not intend to contest such forfeiture.

The jug with anisette manufactured by Mrs. Cristiano in her home and the bootleg alcohol in the five-gallon can are illicit. R. S. 33:1-1(i). The bottles of whiskey and beer and the wine manufactured under color of the permit, while perhaps legitimate in origin, are nevertheless subject to seizure and forfeiture because they were found in the dwelling in which the illicit alcoholic beverages were kept. R. S. 33:1-1(y), R. S. 33:1-66.

It may be well to point out that only those that are law-abiding, especially in so far as it relates to the Alcoholic Beverage Law, are qualified to obtain permits to manufacture home made wine. See R. S. 33:1-75. Where a permittee engages in unlawful alcoholic beverage activities, by selling and possessing illicit alcohol and manufacturing home made anisette, home made wine found therewith is not exempt from forfeiture merely because it may have been manufactured pursuant to a permit.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and that the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and State, county and municipal institutions, or destroyed in whole or in part at the direction of the State Commissioner of Alcoholic Beverage Control.

ERWIN B. HOCK
Deputy Commissioner.

Dated: August 13, 1946.

SCHEDULE "A"

8 - 50-gallon barrels with wine
1 - 15-gallon barrel with wine
1 - 5-gallon can of alcohol
90 - bottles of beer
3 - bottles of other alcoholic beverages

8. DISCIPLINARY PROCEEDINGS - CHARGES OF FALSE ANSWER IN LICENSE APPLICATION AND AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE DISMISSED - EMPLOYING DISQUALIFIED PERSON (NON-CITIZEN) - SALE OF ALCOHOLIC BEVERAGES TO MINORS - LICENSE SUSPENDED FOR A PERIOD OF 40 DAYS.

In the Matter of Disciplinary Proceedings against

PIETRO CINAGLIA
T/a PETE'S CAFE
1102 South 4th Street
Camden, N. J.,

Holder of Plenary Retail Consumption License C-186 for the fiscal year 1942-43, and now holder of Plenary Retail Consumption License C-115, issued for the same premises by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

In the Matter of Disciplinary Proceedings against

PIETRO CINAGLIA
1102 South 4th Street
Camden, N. J.,

Holder of Plenary Retail Consumption License C-172 for the fiscal year 1943-44, and now holder of Plenary Retail Consumption License C-115, issued for the same premises by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

In the Matter of Disciplinary Proceedings against

PIETRO CINAGLIA
T/a PETE'S CAFE
1102 South 4th Street
Camden, N. J.,

Holder of Plenary Retail Consumption License C-114 for the fiscal year 1945-46, and now holder of Plenary Retail Consumption License C-115, issued for the same premises by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

CONCLUSIONS AND ORDER

Edward V. Martino, Esq., Attorney for Defendant-licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

In the first case cited above, defendant pleaded not guilty to charges (1) and (2) which alleged, in substance, that he was a "front" for his father, Luigi Cinaglia. Despite some admissions made by defendant during the course of the investigation, I shall accept as true the sworn testimony of defendant given at the hearing, that he was and is the sole person interested in the license and hence, upon the record presented herein, shall dismiss both charges.

In the same proceedings defendant pleaded guilty to a charge alleging that, on April 24, 1943, and on divers days prior thereto, he knowingly employed Frances Cinaglia, a person who would fail to qualify as a licensee by reason of non-citizenship, in violation of R. S. 33:1-26 and Rule 1 of State Regulations No. 11.

In the second case cited above, defendant pleaded guilty to charges alleging that during the months of March and April 1943 he served alcoholic beverages to four minors.

In the third case cited above, defendant pleaded not guilty to charges alleging that on various dates in February 1946 and March 1946, he sold alcoholic beverages to two minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

In the last mentioned case, two minors, who were respectively seventeen and fifteen years of age, were arrested in connection with the theft of an automobile. Apparently they showed signs of intoxication at the time of their arrest and, as a result, an investigation was made by this Department. During the course of the investigation, and at the hearing herein, both boys testified that on March 8, 1946 they entered defendant's premises. Both boys testified that at that time Bruno Cinaglia, brother of defendant, who was tending bar, sold to the older boy a fifth of wine and two quarts of beer for which they paid the sum of $1.70. The boys consumed the alcoholic beverages after they left defendant's premises.

At the hearing Bruno Cinaglia and the licensee both denied that the boys had purchased any alcoholic beverages at any time upon defendant's premises. However, the testimony of the boys appears to be clear-cut, and I believe that they told the truth. Their testimony as to the identification of defendant's premises and Bruno Cinaglia was not shaken despite a vigorous cross-examination. Hence I find defendant guilty as to the charges set forth in the third case cited above.

As to penalty: The only possible mitigating circumstance I find is that defendant himself did not participate in the violation set forth in the third case. Without attempting to impose a separate suspension in each case, I shall suspend defendant's license for a total period of forty days because of the violations set forth in the three cases.

Although these proceedings were instituted during prior licensing periods, they do not abate but remain fully effective against the renewal license for the licensing year 1946-47. State Regulations No. 16.

Accordingly, it is, on this 13th day of August, 1946,

ORDERED, that Plenary Retail Consumption License C-115, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Pietro Cinaglia, t/a Pete's Cafe, for premises 1102 South 4th Street, Camden, be and the same is hereby suspended for forty (40) days, commencing at 7:00 a.m. August 19, 1946, and terminating at 7:00 a.m. September 28, 1946.

ERWIN B. HOCK
Deputy Commissioner.

9. DISCIPLINARY PROCEEDINGS - PERMITTING LEWDNESS AND IMMORAL ACTIVITY ON LICENSED PREMISES - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS (SUNDAY) AND FAILURE TO KEEP INTERIOR OF LICENSED PREMISES OPEN TO PUBLIC VIEW, IN VIOLATION OF MUNICIPAL REGULATION - SALE OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION DURING PROHIBITED HOURS - PERMITTING LICENSED PREMISES TO BE CONDUCTED AS A NUISANCE - LICENSE REVOKED.

PREMISES - DISQUALIFICATION PROCEEDINGS - PREMISES DECLARED INELIGIBLE FOR A LICENSE FOR A PERIOD OF TWO YEARS.

In the Matter of Disciplinary Proceedings against

JOHN EDWARD KING
36 Straight Street
Paterson 1, N. J.,

Holder of Plenary Retail Consumption License C-167 for the fiscal year 1945-46, issued by the Board of Alcoholic Beverage Control of the City of Paterson, and which license has, during the pendency of these proceedings, been transferred to premises at

34 Straight Street
Paterson 1, N. J.,

and renewed for the fiscal year 1946-47.

- -

In the Matter of Affiliate Proceedings to Disqualify the Premises known as 36 Straight Street, Paterson, N. J.

- -

CONCLUSIONS AND ORDERS

Charles S. Silberman, Esq., Attorney for Defendant-licensee.
Edward H. Saltzman, Esq., Attorney for Straight Realty Corp., Owner of Premises.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

Charges were preferred against the defendant, John Edward King, alleging that (1) on various dates during the months of October and December, 1945, he allowed, permitted and suffered lewdness and immoral activities in and upon the licensed premises, in violation of Rule 5 of State Regulations No. 20; (2) on October 28, 1945, he sold and served alcoholic beverages during prohibited hours upon his licensed premises, in violation of a resolution adopted by the City of Paterson on June 28, 1935, as amended June 30, 1939; (3) on October 28, 1945, he failed to keep the entire interior of his licensed premises open to public view from the outside thereof, in violation of a resolution adopted by the City of Paterson on June 28, 1935; (4) on Sunday, December 2, 1945, he sold and delivered a bottle of alcoholic beverages in its original container for off-premises consumption, in violation of Rule 1 of State Regulations No. 38, and (5) on all the aforesaid occasions he allowed, permitted and suffered the licensed premises to be conducted in such a manner as to become a nuisance, in violation of Rule 5 of State Regulations No. 20.

The defendant-licensee pleaded guilty to charges 2 and 3 and not guilty to charges 1, 4 and 5.

The premises originally licensed consist of a building of brick construction, three stories in height, operated as an hotel with a

barroom therein. On the ground floor are the barroom and a sitting or dining room, connected by a passageway in which there is a small desk at the foot of a stairway to the upper floors which contain the rooms for hotel patrons.

An ABC inspector testified that on Sunday morning, October 28, 1945, at about 3:30 a.m., he and a female companion were admitted by the defendant King to the licensed premises. They entered the sitting room and King went into the barroom. A woman employee walked over to a young man and girl sitting at a table in the sitting room and immediately thereafter the couple ascended the stairs. A short time thereafter the inspector summoned the woman who appeared to be employed on the licensed premises and asked her whether or not her employer had told her that he wanted a room. She replied, "I have some people upstairs I just awakened and they ought to be down any minute *** I will hustle those people up a bit so you can go up." After a trip upstairs, she said, "In a minute or so you can go up. I have to change the sheets." The inspector then ordered two drinks of apple brandy and lemon soda which were served to him at approximately 3:43 a.m. The inspector testified that he saw a couple come downstairs and leave by the side door and immediately thereafter the woman employee returned and told him that he could go upstairs to Room 6. She then stated, "You must sign one of the cards", at the same time taking a registry card from the desk. The inspector registered as George Stone, 45 Paterson Street, Paterson, New Jersey, but the woman employee told him he would have to put down "and wife". Shortly thereafter, in response to a prearranged signal, an ABC investigator, together with Detectives Brennan and Stone of the Paterson Police force, entered the premises. Fifteen hotel registry cards were found in the top drawer of the desk. Among these cards, which were presented in evidence, there were two cards for room 3; three for room 4; three for room 6, two for room 7, two for room 8, and two for room 14, all dated October 27th. In the group there were two Mr. and Mrs. Smiths and two Mr. and Mrs. Johnsons.

On December 1, 1945, two ABC investigators visited the premises and found the licensee was tending bar. One investigator testified that while he was at the bar he saw a female employee hand the defendant three one-dollar bills and heard her say, "They will only be an hour or so".

At about 12:05 a.m., on December 2, 1945, they saw the licensee take a quart bottle of gin from the back bar, wrap it in paper and place it on the bar in front of an army major, who paid for it with three one-dollar bills. A short time thereafter the licensee, carrying the bottle of gin, walked to the street with the army major.

The investigators further testified that on a subsequent visit, on December 5, 1945, they heard one of the patrons known as "Granny", who was said to be the day bartender, use very loud and profane language. Another patron, after demanding the crowd's attention, started to tell a joke, explaining that it was "clean". The investigator testified that the joke was not only a filthy story but contained vile and indecent language, after the telling of which the licensee said laughingly, "That was a clean joke!"

One of the investigators testified that he again visited the licensed premises on the night of December 8, 1945, and that the other investigator and a female companion entered about a half hour thereafter. The second investigator testified that, when the licensee approached him shortly after he entered the barroom, he asked the licensee, "Can you let me have a room for about a hour or so? I am all set and the girl friend cannot wait." The licensee answered, "All right, let me know when you are ready." Shortly thereafter, this investigator told the licensee, "I am ready", and the licensee replied, "See Sue in the back room". The investigator went to Sue, who was seated in the passageway, and she handed him a registry card.

When she asked him to sign it, she said, "Don't use Jones or Clark, we have several of those already". From the testimony it appears that during this investigator's conversation with the licensee and Sue, he referred to his female companion on several occasions as his "girl friend".

Almost immediately after the investigator had registered himself and his female companion, a member of the Paterson Police force arrived in response to a telephone call. The police officer and ABC agents accompanied King upstairs to make inquiries of the occupants of the various rooms. This investigation showed that four couples (all that were questioned) found in various rooms were not married to each other.

On this occasion, twenty-one cards were found in the desk. Among these cards, which were presented in evidence, there were two cards for room 1, four for room 2, three for room 3, two for room 4, two for room 6, three for room 8, and two for room 9, all dated December 8th.

Susie Meier, the employee who assigned the room to the investigator and his female companion, testified that she never made inquiry as to whether or not couples who rented the rooms were married and that all the couples who rented rooms did not have baggage with them. She admitted that the investigator and his female companion had no baggage with them. She also testified that she remembered his saying, "Should I use Jones or something else" and that she said, "No, put your right name down". She admitted having a Jones registered that night and also that she stated during the course of the investigation that each room was rented at least on an average of twice a night.

The defendant King admitted that he had pleaded with one of the investigators not to go through any more rooms, saying that he would "sign any statement rather than see any homes broken up". Otherwise he denied most of the statements attributed to him by the investigators. Although he denied that he rented any rooms, three of the registry cards bore the initial "K" as room clerk.

The defendant offered two explanations for the multiple renting of rooms on a single date. One explanation given was, "Very often a couple will go to a room assigned to them and say they don't like the room. They are shown another room which they take. The card is filled out downstairs with the room assigned to them, and in the event they take a different room, I told Mrs. Meier not to mutilate the cards but to remember what room the party took and leave the card as is". The defendant's other explanation is that "Paterson is a shopping center. People come there to wash up and clean up. They stay a couple of hours and refresh themselves and go back to country communities within fifteen or thirty miles. The fact a card may have the same room number on it, the person may be assigned to one room and decide they would like to use another, take the other, and leave the one assigned to them vacant. No guests may come up and be assigned to the room the other people refused to take with the result another room would be made out on that card".

King further testified that the hotel contains sixteen rooms, six of which were occupied by permanent tenants, making ten available for transients.

With respect to charge No. 1, I am satisfied that King was fully aware of the immoral activities conducted on his licensed premises and actually permitted such activities to be carried on. The fact that rooms were rented out three and sometimes four times on the

same day to couples who carried no luggage and the fact that on December 8, 1945, of the rooms available to transients, at least forty per cent (or one hundred per cent of those checked) were occupied by couples not married to one another, can lead to no other inference. In my opinion, even the most naive person would have known what was going on. I find the defendant guilty of charge No. 1.

With reference to charge No. 4, the defendant fully admitted his guilt. His only excuse was that the major to whom he sold the bottle of gin was a friend.

As to charge 5, the outrageous course of conduct of the licensed place of business clearly constituted a nuisance. In State v. Berman, 120 N. J. L. 381, Chief Justice Brogan stated:

> "It has been repeatedly held that any place of public resort is a public nuisance where illegal practices are habitually carried on or when such place becomes the habitual resort of thieves, drunkards, prostitutes, &c., who gather there for an unlawful purpose or make it a rendezvous where plans may be concocted for depredations upon society and disturbing either its peace or its rights of property."

See also State v. Williams, 30 N. J. L. 102.

A licensee who deliberately encourages such practices and conditions as existed in the instant case is not one to be associated with the alcoholic beverage industry. I shall, therefore, revoke the defendant's license, effective immediately.

Furthermore, because the defendant appears to be the major stockholder of the Straight Realty Corporation which holds title to such premises and because of the seriousness of the charges herein, I shall disqualify the hotel premises known as 36 Straight Street, Paterson, N. J. for a period of two (2) years from the date herein.

Although this proceeding was instituted during the licensing year 1945-46, it does not abate but remains fully effective against the renewal license for the licensing year 1946-47. State Regulations No. 16.

Accordingly, it is, on this 13th day of August, 1946,

ORDERED, that Plenary Retail Consumption License C-167, issued by the Board of Alcoholic Beverage Control of the City of Paterson for the fiscal year 1946-47, to John Edward King, for premises 34 Straight Street, Paterson, be and the same is hereby revoked, effective immediately; and it is further

ORDERED, that hotel premises known as 36 Straight Street, Paterson, be and the same are hereby declared ineligible to become the subject of any further alcoholic beverage license of any kind or class for a period of two (2) years, commencing on the date hereof.

ERWIN B. HOCK
Deputy Commissioner.

10. STATE LICENSES - NEW APPLICATIONS FILED.

Phillip Hoffman
T/a Hoffman Import & Distributing Company
115 Railroad Ave.
Jersey City, N. J.

Application for Plenary Wholesale License filed August 15, 1946.

Ernest B. Hock
Deputy Commissioner.