

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark 2, N. J.

BULLETIN 855

OCTOBER 5, 1949.

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STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark 2, N. J.

BULLETIN 855

OCTOBER 5, 1949.

1. DISCIPLINARY PROCEEDINGS - BOOKMAKING AND GAMBLING - LICENSE  
SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

SELENA A. BOWER )  
T/a BOWER'S CAFE )  
354 North Main Street )  
Glassboro, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-3, issued by the )  
Mayor and Council of the Borough )  
of Glassboro. )

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George B. Marshall, Esq., Attorney for defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant pleads non vult to a charge alleging that she allowed, permitted and suffered bookmaking and gambling on or about her licensed premises, in violation of Rule 7 of State Regulations No. 20.

The file discloses that, on May 13, 1949, a detective of the State Police, pursuant to a special assignment, placed bets on a horse with a bookmaker in defendant's licensed premises. On May 14th and 19th, 1949, the detective left money to be bet on horses with defendant's bartender, who was in charge of defendant's licensed premises on the occasions in question. On June 3, 1949, the bookmaker aforementioned was taken into custody by the detective and other law enforcement officers at defendant's licensed premises.

The licensee denies that she had knowledge that her employee was engaged in or aiding and abetting bookmaking on her licensed premises. Even assuming, as I do here, that defendant had no personal knowledge, nevertheless, such lack of knowledge is of no avail. Billy Urbanski Inc. v. Hock (not officially reported), Bulletin 798, Item 7. True, the responsibility of a licensee is indeed heavy. However, as stated in Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup. Ct. 1947); Bulletin 773, Item 5:

"Although the word 'suffer' may require a different interpretation in the case of a trespasser, it imposes responsibility on a licensee, regardless of knowledge, where there is a failure to prevent the prohibited conduct by those occupying the premises with his authority. Guastamachio v. Brennan, 128 Conn. 356, 23 A. (2d) 140."

Defendant has no previous adjudicated record. I shall, therefore, suspend her license for a period of twenty days, less five days' remission for the plea entered herein, leaving a net suspension of fifteen days. Re Elia, Bulletin 801, Item 3.

Accordingly, it is, on this 23rd day of September, 1949,

ORDERED that Plenary Retail Consumption License C-3, issued by the Mayor and Council of the Borough of Glassboro to Selena A. Bower, t/a Bower's Cafe, for premises 354 North Main Street, Glassboro, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 1:00 a.m. October 4, 1949, and terminating at 1:00 a.m. October 19, 1949.

ERWIN B. HOCK

2. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES AND FIXTURES AND EQUIPMENT OF SPEAKEASY IN RESTAURANT ORDERED FORFEITED - VARIOUS ITEMS RETURNED TO INNOCENT OWNERS.

In the Matter of the Seizure ) Case No. 7471  
on July 10, 1949 of a quantity of )  
alcoholic beverages and various )  
fixtures, furnishings, equipment )  
and merchandise at 238 Broome Street, ) ON HEARING  
in the City of Newark, County of ) CONCLUSIONS AND ORDER  
Essex and State of New Jersey. )

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Benjamin Arons, Esq., Attorney for Stein Store Fixture Corp.  
Max Freedman, Pro Se.  
Public Service Tobacco Co., by Lewis R. Albert, Sales Manager.  
Harry Markowitz, trading as Vita Pastry Co., Pro Se.  
Fine Store Fixture Company, by Maurice Doyle.  
20th Century Enterprises, by Howard Berk, Sales Manager.  
Harry Castelbaum, Esq., appearing for the Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a quantity of alcoholic beverages, \$19.96 in cash, and various fixtures, furnishings, equipment and merchandise, itemized in the schedule attached hereto, seized on July 10, 1949 in a restaurant operated by James Martucci, at 238 Broome Street, Newark, New Jersey, constitute unlawful property and should be forfeited.

It appears that the seizure was made by Newark police officers, after they witnessed the sale on the street of a bottle of wine by one Landon Moore to one Benjamin J. Mess, and were told by Moore that he purchased the wine a short time before at the restaurant in question. The police officers immediately went to the restaurant, but Martucci was not there. The officers then padlocked the place, and notified the Division of Alcoholic Beverage Control.

ABC agents seized the alcoholic beverages and other items in the restaurant, when it was ascertained that James Martucci did not hold a license authorizing him to sell or serve alcoholic beverages and the premises were not licensed for the sale of alcoholic beverages.

When the matter came on for hearing pursuant to R.S. 33:1-66, Martucci did not appear to contest forfeiture of the property seized. The hereinafter named claimants appeared and sought return of the articles hereinafter specified. These claimants did not challenge the accuracy of the facts whereby the seizure was made.

The circumstances outlined justify the conclusion that the 81 bottles of wine and the bottle of whiskey seized in the restaurant were intended for unlawful sale. Hence, such wine and whiskey are illicit alcoholic beverages and, together with the other property seized, are subject to forfeiture. R.S. 33:1-1(i) and (y), R.S. 33:1-2, R.S. 33:1-66.

Stein Store Fixture Corp. claims ownership of the counter and seven stools seized in the place. It presented a conditional sales contract dated September 4, 1948, covering a 20-foot counter and nine stools, entered into between the fixture corporation and one Yetta Telesnick, alleged to be a former owner of the establishment. The description of these articles is identical with those seized. There is an unpaid balance of \$98.00 due on the contract. The account has been in default for a few months, and the claimant should have, perhaps, repossessed the stools and counter before the seizure. Nevertheless, any such lack of diligence does not legally alter materially its status as the holder of a bona fide lien.

Maurice A. Doyle, on behalf of Fine Store Fixture Company, seeks return of a National cash register. He presented an invoice to Mr. Mac Telesnick for a cash register bearing the same number as that seized by this Division. According to this invoice, payments were to be made periodically. However, there is no reservation of title by the fixture company. It was a sale on credit on an open account, and Mr. Doyle acknowledges that such is the fact. Mr. Doyle also presented a conditional sales contract bearing an earlier date, covering a different cash register. This document, of course, has no connection with the transaction here involved. Hence, I am compelled to deny the request for return of the cash register because the claimant does not have a valid lien upon, or specific interest therein. See Seizure Case No. 7397, Bulletin 846, Item 2.

The Public Service Tobacco Co. seeks return of a cigarette vending machine. Mr. Albert, the sales manager of the concern, presented evidence which established its ownership of the seized machine by serial number identification and says that such machine was placed there at the request of the previous owner of the establishment.

Harry Markowitz, trading as Vita Pastry Co., presented a document dated March 19, 1949, addressed to Mac's Luncheonette at the Broome Street address, and acknowledging the loan of a glass pastry case by Markowitz to the luncheonette.

It is represented that John Tonko, trading as 20th Century Enterprises, is the owner of the seized music machine. Howard Berk testified that he undertook to manage Tonko's affairs because Tonko was ill in the hospital, and presented documents which established that Tonko was the owner of a Wurlitzer Music Machine bearing the same serial number as that on the seized machine, and that such machine was placed in Mac's Lunch on June 22, 1949.

Max Freedman claims that he is the owner of the ice cream cabinet seized in the store, although he did not place it there. He does not present any dispositive evidence of ownership thereof, nor any receipt from the proprietor of the establishment acknowledging that the seized cabinet was loaned to him by Freedman. All that he presented was what purported to be an informal receipt evidencing the sale to him of a Kelvinator ice cream cabinet. This was written after the seizure, and the cabinet is not identified by any serial number. This is unsatisfactory evidence of ownership of the seized cabinet and hence, Freedman's request for its return is denied.

All of the claimants agree that the establishment was not prosperous and was closed for one or more short periods, with two or more successive owners whose identities were for the most part unknown to them. However, there were no visible signs that it was a speakeasy and Martucci, the last known owner, apparently has no criminal record for violating the liquor laws. The claimants carried on the type of business whereby their equipment is placed, in normal business routine, in any location where, by observation, it seemingly is a legitimate enterprise. The restaurant in question was considered by the claimants to be of that character and, in fairness, it cannot be said that they were negligent in not discovering that speakeasy activities were being carried on there.

Hence, I find as a fact that Stein Store Fixture Corp., Public Service Tobacco Co., Harry Markowitz and John Tonko acted in good faith and had no actual knowledge or reason to suspect, that speakeasy activities were carried on at the restaurant. Accordingly, I will recognize their claims. R.S. 33:1-66(f).

There will not be any apparent advantage to the State to retain the counter and stools for the benefit of a state institution conditioned upon the payment of the lien claim, and it also appears that a public sale of such items will not realize sufficient to pay the lien claim and the costs of seizure and storage.

Accordingly, if on or before the 3rd day of October, 1949, Stein Store Fixture Corp., Public Service Tobacco Co., Harry Markowitz and John Tonko each pay their proportionate share of the costs of seizure and storage, as allocated by the Director, the counter and stools, cigarette vending machine, glass pastry case and music machine will be returned to them respectively; and it is further

DETERMINED and ORDERED that the balance of the seized property, including the cash and the currency in the vending and amusement machines, 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 Director of Alcoholic Beverage Control.

Dated: September 23, 1949.

ERWIN B. HOCK  
Director.

SCHEDULE "A"

- 81 - bottles of wine
- 1 - bottle of whiskey
- 6 - bottles of soda
- 1 - Pinball machine - #B1778 and currency therein
- 1 - Cigarette vending machine - #70795 and currency therein
- 1 - Wurlitzer Music Machine - #606817 and currency therein
- 1 - Whirlball Machine
- 1 - glass case
- 7 - counter stools
- 1 - Heinz Soup Cabinet
- 1 - Midget Radio
- 1 - National Cash Register #1959820 and \$19.96 in currency
- 3 - gas ranges
- 2 - tables
- 1 - sink
- 1 - soda cooler
- 1 - Shelvador
- 1 - exhaust fan
- 1 - drip pan and metal stand
- 1 - counter
- Miscellaneous restaurant equipment and merchandise
- 1 - chewing gum vending machine - and currency therein

- 3. DISCIPLINARY PROCEEDINGS - PIN BALL MACHINES - NO REMISSION FOR PLEA OF NON VULT ENTERED ON DATE OF HEARING - LICENSE SUSPENDED FOR 10 DAYS, EFFECTIVE ON REOPENING OF BUSINESS.

In the Matter of Disciplinary Proceedings against )

JACK YOCHES )  
 T/a NEW ATLANTIC HOTEL )  
 240-250 Ocean & Pavilion Aves. )  
 Long Branch, N. J., )

CONCLUSIONS AND ORDER

Holder of Seasonal Retail Consumption License CS-3, issued by the Board of Commissioners of the City of Long Branch. )

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 Jack Yoches, Defendant-licensee, Pro Se. )  
 William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control. )

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On August 13, 1949 and prior thereto, you allowed, permitted and suffered two machines or devices commonly known as bagatelle or pin ball machines on and about your licensed premises; in violation of Rule 7 of State Regulations No. 20."

On August 13, 1949, in the course of a regular inspection of the licensed premises, an agent of the Division of Alcoholic Beverage Control observed two pin ball machines in the licensed premises, i.e., in the lobby of the hotel.

The defendant has no prior adjudicated record. I shall therefore suspend the license for ten days. Re Carteret Club of Trenton, Bulletin 672, Item 12. The confessional plea was not entered in these proceedings until the day of hearing and after the Division had been put to the expense and trouble of subpoenaing its witnesses. Therefore, the remission usually granted in cases when the plea is received in time will not be allowed. Cf. Re Jagielski, Bulletin 593, Item 6.

Defendant holds a seasonal retail consumption license, the term of which will expire on November 1, 1949. I am advised that he has closed his licensed premises and that they will not reopen prior to the termination of his license. Thus, no effective penalty can be imposed at the present time. Cf. Re Solomon, Bulletin 586, Item 2.

Accordingly, it is, on this 26th day of September, 1949,

ORDERED that Seasonal Retail Consumption License CS-3, issued by the Board of Commissioners of the City of Long Branch to Jack Yoches, t/a New Atlantic Hotel, 240-250 Ocean & Pavilion Aves., Long Branch, or any license issued in renewal thereof, be and the same is hereby suspended for a period of ten (10) days. Further order fixing the period of suspension will be entered if and when the defendant, or any other person, obtains a renewal of his seasonal retail consumption license for the period commencing May 1, 1950.

ERWIN B. HOCK  
 Director.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - TRANSPORTATION OF ALCOHOLIC BEVERAGES, IN VIOLATION OF RULE 3 OF STATE REGULATIONS NO. 17 REQUIRING BONA FIDE INVOICES OR MANIFESTS COVERING SHIPMENT - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

KATHRYN DUX NOLTE )  
 T/a GREENWAY INN )  
 263 White Horse Avenue )  
 Clementon, N. J., )

CONCLUSIONS  
 AND ORDER

Holder of Plenary Retail Consumption License C-7, issued by the Borough Council of the Borough of Clementon. )

-----  
 Kathryn Dux Nolte, Defendant-licensee, Pro Se.  
 Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging (1) she sold and delivered, and allowed, permitted and suffered the delivery on Sunday of alcoholic beverages at retail, in original containers, for consumption off the licensed premises, in violation of Rule 1 of State Regulations No. 38; and (2) she used her licensed vehicle, bearing transportation insignia, to deliver alcoholic beverages without the driver having in his possession bona fide invoices or manifests, in violation of Rule 3 of State Regulations No. 17.

The file herein discloses that on Sunday, August 21, 1949, at about 12:40 p.m., ABC agents observed a man who carried a wooden case from defendant's licensed premises and placed it in the trunk of a car which bore a transportation insignia. The agents followed the car until it stopped at a dwelling. They then approached the car and identified themselves to the driver, who was Anton Nolte, husband of the licensee. Further investigation developed the fact that the wooden case, which had been placed in the trunk of the car, contained twelve one-quart bottles of beer which were being delivered to a customer who had a standing order with defendant-licensee. The driver of the car admitted to the agents that he did not have in his possession an invoice or manifest covering said delivery as required by Rule 3 of State Regulations No. 17.

Clearly, defendant violated both rules cited in the charges.

The defendant has no prior adjudicated record. As to charge (1), the minimum suspension is fifteen days. Bulletin 766, Item 6. As to charge (2), the minimum suspension is ten days. Bulletin 839, Item 1. Under the circumstances, I shall suspend defendant's license for twenty-five days. Remitting five days because of the plea will leave a net suspension of twenty days. Bulletin 844, Item 8.

Accordingly, it is, on this 30th day of September, 1949,

ORDERED that Plenary Retail Consumption License C-7, issued by the Borough Council of the Borough of Clementon to Kathryn Dux Nolte, t/a Greenway Inn, for premises 263 White Horse Avenue, Clementon, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. October 7, 1949, and terminating at 3:00 a.m. October 27, 1949.

ERWIN B. HOCK  
 Director.

5.

ACTIVITY REPORT FOR SEPTEMBER 1949

October 3, 1949

ARRESTS:

Total number of persons arrested	-----	15
Licenses and employees	-----	1
Bootleggers	-----	13
ABC agent impersonator	-----	1

SEIZURES:

Motor vehicles - cars	-----	1
- trucks	-----	1
Stills - over 50 gallons	-----	4
- 50 gallons or under	-----	1
Mash - gallons	-----	1,250.00
Distilled alcoholic beverages - gallons	-----	57.93
Wine - gallons	-----	51.97
Brewed malt alcoholic beverages - gallons	-----	21.05

RETAIL LICENSEES:

Premises inspected	-----	782
Premises where alcoholic beverages were gauged	-----	892
Bottles gauged	-----	15,542
Premises where violations were found	-----	40
Violations found	-----	50
Type of violations found:		
Unqualified employees	-----	27
Reg. #38 sign not posted	-----	5
Gambling devices	-----	4
Other mercantile business	-----	3
Probable fronts	-----	2
Prohibited signs	-----	1
Disposal permit necessary	-----	1
Other violations	-----	7

STATE LICENSEES:

Premises inspected	-----	33
License applications investigated	-----	12

COMPLAINTS:

Complaints assigned for investigation	-----	277
Investigations completed	-----	310
Investigations pending	-----	133

LABORATORY:

Analyses made	-----	114
"Shake-up" cases (alcohol, water and artificial color) - bottles	-----	11
Liquor found to be not genuine as labeled - bottles	-----	14

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made	-----	10
Persons fingerprinted for non-criminal purposes	-----	180
Identification contacts made with other enforcement agencies	-----	138
Motor vehicle identifications via N. J. State Police Teletype	-----	9

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities	-----	16
Violations involved:		
Sale to intoxicated persons	-----	6
Sale to minors	-----	4
Sale during prohibited hours	-----	4
Permitting brawls on premises	-----	2
Sale to non-members by clubs	-----	1
Permitting slot machines on premises	-----	1
Hindering investigation	-----	1
Possessing contraceptives on premises	-----	1
Cases instituted at Division	-----	14
Violations involved:		
Possessing illicit liquor	-----	6
Sale to minors	-----	4
Sale during prohibited hours	-----	2
Sale outside scope of license	-----	1
Sale contrary to conditions of permit	-----	1
Delivery without bona fide invoices	-----	1
Permitting slot machines on premises	-----	1
Failure to afford view into premises during prohibited hours	-----	1
Cases brought by municipalities on own initiative and reported to Division	-----	4
Violations involved:		
Sale to minors	-----	2
Sale to intoxicated persons	-----	1
Permitting noise on premises	-----	1
Permitting immoral activity on premises	-----	1

HEARINGS HELD AT DIVISION:

Total number of hearings held	-----	34
Appeals	-----	4
Disciplinary proceedings	-----	17
Eligibility	-----	8
Seizures	-----	3
Tax revocation	-----	1
Application for license	-----	1

PERMITS ISSUED:

Total number of permits issued	-----	994
Employment	-----	149
Social affairs	-----	411
Solicitors	-----	116
Special wine	-----	73
Disposal of alcoholic beverages	-----	116
Miscellaneous	-----	129

ERWIN B. HOCK, DIRECTOR

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PRIOR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against ANTHONY DI NARDO T/a TERMINAL MUSICAL BAR 49 No. Arkansas Avenue Atlantic City, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-235, issued by the Board of Commissioners of the City of Atlantic City.

Julius Waldman, Esq., Attorney for Defendant-licensee. William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he possessed illicit alcoholic beverages at his licensed premises, in violation of Rule 28 of State Regulations No. 20.

On August 15, 1949 an agent of the Federal Treasury Department, Alcohol Tax Unit, while on defendant's licensed premises, seized one quart bottle labeled "Calvert Reserve Blended Whiskey" and two quart bottles labeled "Seagram's Seven Crown Blended Whiskey" when his field tests indicated that the contents of said bottles were not genuine as labeled. Subsequent analysis by the Federal Department's chemist disclosed that the contents of the seized bottles differed substantially in acids and solids from the contents of genuine samples of the same products.

Defendant has a previous adjudicated record. Effective June 13, 1949, defendant's license was suspended for a period of ten days by the local issuing authority as a result of a conviction for sales of alcoholic beverages to minors. Under the circumstances, I shall suspend defendant's license for a period of twenty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 3rd day of October, 1949,

ORDERED that Plenary Retail Consumption License C-235, issued by the Board of Commissioners of the City of Atlantic City to Anthony DiNardo, t/a Terminal Musical Bar, for premises 49 North Arkansas Avenue, Atlantic City, be and the same is hereby suspended for a period of twenty (20) days, commencing at 7:00 a.m. October 11, 1949, and terminating at 7:00 a.m. October 31, 1949.

ERWIN B. HOCK Director.

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

LOUISE KENNY, OWEN D. KENNY and ALICE WERNER T/a BRUCE GRILL 1-3-5-7 So. Michigan Avenue Atlantic City, N. J., )

CONCLUSIONS AND ORDER

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Holders of Plenary Retail Consumption License C-19, issued by the Board of Commissioners of the City of Atlantic City. )

Louise Kenny, Owen D. Kenny and Alice Werner, Defendant-licensees, by Louise Kenny.  
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that they possessed illicit alcoholic beverages at their licensed premises, in violation of Rule 28 of State Regulations No. 20.

On August 18, 1949, an agent of the Federal Treasury Department, Alcohol Tax Unit, while on defendants' licensed premises, seized one 4/5 quart bottle labeled "Canadian Club Blended Whisky", one quart bottle labeled "Schenley Reserve Blended Whiskey", and one quart bottle labeled "Seagram's Seven Crown Blended Whiskey", when his tests indicated that the contents of said bottles were not genuine as labeled. Subsequent analysis by the Federal Department's chemist disclosed that the contents of the seized bottles varied substantially in acids and solids from the contents of genuine samples of the same products.

Defendants deny that they tampered with the contents of the seized bottles. However, the mere possession of an illicit alcoholic beverage on licensed premises constitutes a violation. Cedar Restaurant and Cafe v. Hoek, 135 N.J.L. 156.

Defendants have no prior adjudicated record. I shall suspend their license for the minimum period of twenty days, less five days for the plea entered herein, leaving a net suspension of fifteen days. Re Roman, Bulletin 829, Item 6.

Accordingly, it is, on this 3rd day of October, 1949,

ORDERED that Plenary Retail Consumption License C-19, issued by the Board of Commissioners of the City of Atlantic City to Louise Kenny, Owen D. Kenny and Alice Werner, t/a Bruce Grill, for premises 1-3-5-7 So. Michigan Avenue, Atlantic City, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 7:00 a.m. October 10, 1949, and terminating at 7:00 a.m. October 25, 1949.

ERWIN B. HOCK  
Director.

8. DISCIPLINARY PROCEEDINGS - SALES TO MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

ERVEL POWERS )  
T/a CLUB ERVEL )  
Route 35 )  
Eatontown, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-6, issued by the Mayor and Council of the Borough of Eatontown. )

----- )  
Leo J. Berg, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that she sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to Private Harlan ---, a minor, and allowed, permitted and suffered said minor to consume alcoholic beverages upon her licensed premises, in violation of R.S. 33:1-77 and Rule 1 of State Regulations No. 20.

The file herein discloses that, in a statement given to ABC agents, the minor admitted that on divers dates during June, July and August 1949 (as set forth in charges) he had purchased and consumed alcoholic beverages on defendant's premises. The minor, who was born on July 28, 1929, alleges that the pass which he uses when on leave is stamped "minor".

Defendant, who admitted to the ABC agents that she had served one glass of beer to the minor, alleges that the minor produced an adult pass on his first visit to her premises. A bartender then employed by defendant, and a waitress employed by defendant, both admitted to ABC agents that they had served alcoholic beverages to the minor, but declared that the minor had produced an adult pass. In any event, the mere production of an adult pass by a minor would not establish a complete defense, because it has not been established that the minor falsely represented, in writing, that he was twenty-one years of age or over, as required by R.S. 33:1-77(a). See Re Roey, Bulletin 747, Item 3, in which case application for a writ of certiorari was denied. Bulletin 758, Item 2.

Defendant has no prior adjudicated record. Considering the fact that the minor was approximately twenty years of age, I shall suspend the defendant's license for ten days, the minimum period of suspension in such cases. See Bulletin 582, Item 1. Remitting five days because of the plea will leave a net suspension of five days.

Accordingly, it is, on this 3rd day of October, 1949,

ORDERED that Plenary Retail Consumption License C-6, issued by the Mayor and Council of the Borough of Eatontown to Ervel Powers, t/a Club Ervel, for premises on Route 35, Eatontown, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. October 10, 1949, and terminating at 2:00 a.m. October 15, 1949.

ERWIN B. HOCK  
Director.

9. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE (ALIEN TO EXERCISE THE RIGHTS AND PRIVILEGES OF LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR 45 DAYS.

In the Matter of Disciplinary Proceedings against )

JAMES CINDRARIO )  
 1105-1107 Bergenline Avenue )  
 Union City, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-45, issued by the Board of Commissioners of the City of Union City. )

-----  
 James Cindrario, Defendant-licensee, Pro Se.  
 William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleads non vult to the following charges:

"1. In your application dated June 2, 1949, filed with the Board of Commissioners of the City of Union City, upon which you obtained your current plenary retail consumption license, 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 Federico Cattaneo had such an interest in that he was the real and beneficial owner of the said business; said false statement being in violation of R.S. 33:1-25.

"2. From July 1, 1939 until the present time, you knowingly aided and abetted Federico Cattaneo (a person who prior to December 7, 1944 was disqualified from holding a license by reason of non-citizenship) to exercise, contrary to R.S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses, thereby yourself violating R.S. 33:1-52."

Federico Cattaneo is the stepfather of James Cindrario, the holder of the plenary retail consumption license in question.

When the "front" was created on July 1, 1939, Federico Cattaneo was ineligible to hold a license because he was not a citizen of the United States, but an Italian national. R.S.33:1-25; Re Woertendyke, Bulletin 304, Item 8. Prior to the investigation in this case, however, he became a citizen of the United States on or about December 7, 1944. Nevertheless, the illegal "front" situation was continued. On August 11, 1949, after the service of charges in this matter, Federico Cattaneo, by affidavit, indicated that he has assigned all his right, title and interest in the business conducted under the said license to his stepson, James Cindrario. I shall accept this as a correction of the illegal situation.

The minimum suspension for a case of this character, involving an unlawful interest of a non-citizen, when proof of a bona fide correction has been presented, is forty-five days. Cf. Re Mentine, Bulletin 774, Item 6.

Defendant has a prior adjudicated record. Effective March 3, 1943, the license was suspended for a period of three days as a result of a plea of guilty to permitting an alien to sell and serve alcoholic beverages. Bulletin 556, Item 9. In view of the fact that this violation occurred more than five years ago, I shall not consider it with reference to the suspension to be imposed in the instant proceeding. Under the circumstances, I shall suspend defendant's license for forty-five days.

Accordingly, it is, on this 3rd day of October, 1949,

ORDERED that Plenary Retail Consumption License C-45, issued by the Board of Commissioners of the City of Union City to James Cindrario, for premises 1105-1107 Bergenline Avenue, Union City, be and the same is hereby suspended for a period of forty-five (45) days, commencing at 3:00 a.m. October 17, 1949, and terminating at 3:00 a.m. December 1, 1949.

ERWIN B. HOCK  
Director.

10. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against )

LOUIS RIPA )  
T/a RIPA'S TAVERN )  
350 Henry Street )  
Orange, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-8 issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange, and transferred during the pendency of these proceedings to )

LOUIS RIPA and LEONARD RIPA, )

for the same premises. )

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James A. Palmieri, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

- "1. In your application dated May 25, 1948, filed with the Municipal Board of Alcoholic Beverage Control of Orange, upon which you obtained your plenary retail consumption license for the 1948-49 period, you falsely stated 'No' in answer to Question 31, which asks: 'Have you agreed to pay any employee, or other person, any percentage of the profits derived from the business to be conducted under the license applied for?', whereas in truth and fact you had agreed to permit Leonard Ripa, a person who had been convicted on or about January 12, 1925 of the crime of assault and battery, to retain all of the profits derived from the licensed business; said false statement being in violation of R. S. 33:1-25.
- "2. From January 22, 1934 until the present time, you knowingly aided and abetted Leonard Ripa to exercise, contrary to R. S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses; thereby yourself violating R.S. 33:1-52."

The license in question was originally obtained in 1934 by Louis Ripa and renewed continuously in his name to and including the present licensing year. The original license was obtained by Louis Ripa alone because he advanced all the money originally invested in the business, and his brother, Leonard Ripa, was then merely employed on the licensed premises. However, after a short time it became apparent that the amount of business was not sufficient to support the two brothers, and Louis obtained outside employment. Louis has been so employed continuously since that time, except during the time he served in the armed forces during World War II. However, the agreement between the brothers provided that Leonard, who was ostensibly manager of the business, was to pay a percentage of the profits to their widowed mother, and to retain the balance of the profits for himself. That arrangement continued at least until the time when the charges were preferred. It thus appears that the answer to Question 31 in the license application dated May 25, 1948 was false and also that Louis Ripa aided and abetted Leonard Ripa in exercising the rights and privileges of his successive licenses.

As to penalty: It appears that in 1924, when Leonard Ripa was nineteen years of age, he was arrested on a more serious charge but subsequently permitted to plead guilty in a Court of Special Sessions to a charge of assault and battery, as a result of which he was placed on probation for two years. Both brothers deny that the failure to obtain the original license in the names of both brothers was due to this conviction. It has been ruled in another proceeding that the crime of which Leonard Ripa was convicted does not, in the opinion of the Director, involve moral turpitude. Furthermore, the license has recently been transferred to both names, thus correcting the illegal situation. Under all the circumstances, I shall suspend the license for a period of thirty days. Re Benson, Bulletin 742, Item 6.

Accordingly, it is, on this 4th day of October, 1949,

ORDERED that Plenary Retail Consumption License C-8, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange to Louis Ripa, t/a Ripa's Tavern, for premises 350 Henry Street, Orange, and transferred during the pendency of these proceedings to Louis Ripa and Leonard Ripa, for the same premises, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 a.m. October 10, 1949, and terminating at 2:00 a.m. November 9, 1949.

ERWIN B. HOCK  
Director.

11. ELIGIBILITY - FACTS EXAMINED - ASSAULT AND BATTERY - APPLICANT NOT INELIGIBLE TO HOLD A LICENSE OR BE EMPLOYED BY A LIQUOR LICENSEE.

October 4, 1949.

Re: Case No. 608

In January 1925, when applicant was nineteen years of age, he pleaded guilty in a Court of Special Sessions to a charge of assault and battery and was placed on probation for two years. The crime of assault and battery may or may not involve moral turpitude, depending upon the facts of the case.

At the hearing herein applicant testified that he and another young man had been arrested in December 1924 on a charge of carnal abuse after they had allegedly attacked a young woman. However, he was subsequently permitted to plead non vult to a reduced charge of assault and battery, as indicated above.

It further appears that a local issuing authority has recently transferred a liquor license to the applicant and his brother after the applicant disclosed his conviction in the application filed with the local issuing authority for the transfer of the license. This result indicates that the local issuing authority concluded that the crime did not involve moral turpitude because, otherwise, the applicant herein would not be eligible to obtain a license.

Under the circumstances, I concur in the result reached by the local issuing authority and recommend that the applicant be advised that, in the opinion of the Director, he is not disqualified by said conviction from holding a license or being employed by a liquor licensee.

Edward J. Dorton  
Deputy Director.

APPROVED:  
ERWIN B. HOCK  
Director.

12. STATE LICENSES - NEW APPLICATIONS FILED.

Chr. Heurich Brewing Company  
26th & D Sts., N.W.  
Washington, D. C.

Application for Limited Wholesale License filed October 3, 1949.

Standard Motor Freight Inc.  
2020 - 88th St.  
North Bergen, N. J.

Application for Transportation License filed October 5, 1949.

*Erwin B. Hock*  
Director.