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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 861

DECEMBER 5, 1949.

1. DISCIPLINARY PROCEEDINGS - WINE WHOLESALE LICENSEE - VIOLATIONS OF RULES 4(a) AND 5(b) OF STATE REGULATIONS NO. 39 - LICENSE SUSPENDED FOR 5 DAYS.

In the Matter of Disciplinary Proceedings against

GALLO WINE SALES OF NEW JERSEY, INC.
168-172 Blanchard Street
Newark 5, New Jersey,

CONCLUSIONS
AND ORDER

Holder of Wine Wholesale License WW-5, issued by the Director of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety.

Defendant-licensee, by Jerome Weil, Secretary.
Anthony Meyer, Jr., Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. On September 24, October 15 and December 14, 1948, each date being more than three days after a New Jersey retail licensee became in default to you pursuant to Rule 2(a) of State Regulations No. 39, you failed to file with the State Commissioner of Alcoholic Beverage Control a notice of such default, in that you failed to notify the said Commissioner that retail licensee --- had failed to make payment for wine delivered to him by you on August 19, September 10, and November 10, 1948, respectively; in violation of Rule 5(b) of State Regulations No. 39.

"2. On August 6 and November 15, 1948, each date being more than three days after a New Jersey retail licensee became in default to you pursuant to Rule 2(a) of State Regulations No. 39, you failed to file with the State Commissioner of Alcoholic Beverage Control a notice of such default; and on January 4, 1949, more than three days after a New Jersey retail licensee became in default to you pursuant to Rule 2(a) of State Regulations No. 39, you failed to file with the Director of Alcoholic Beverage Control a notice of such default, in that you failed to notify the said Commissioner and Director, respectively, that retail licensee --- had failed to make payment for wine delivered to him by you on July 1, October 9 and December 1, 1948, respectively; in violation of Rule 5(b) of State Regulations No. 39.

"3. On September 10, 1948, you sold and delivered alcoholic beverages not for payment in cash on delivery to New Jersey retail licensee --- (same licensee mentioned in Charge 1), which licensee was, at the time of said delivery, listed on the Default List of the State Department of Alcoholic Beverage Control, in that you made a delivery of wine to said retailer on credit; in violation of Rule 4(a) of State Regulations No. 39."

Defendant alleges that the violations were committed because of the inexperience of a bookkeeper, since discharged, and that there was no deliberate attempt to violate State Regulations No. 39. This, of course, cannot be accepted as an excuse because the licensee is responsible for the acts of his agent in the course of the conduct of the licensee's business.

Defendant was given an opportunity to obtain a special permit. See Bulletin 849, Items 1 and 3. Having failed to do so, the present proceedings were instituted.

Defendant has no prior record. Under all the circumstances, and considering the plea entered herein, I shall suspend defendant's license for a period of five days.

Accordingly, it is, on this 16th day of November, 1949,

ORDERED that Wine Wholesale License WW-5, issued by the Director of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety to Gallo Wine Sales of New Jersey, Inc., 168-172 Blanchard Street, Newark, be and the same is hereby suspended for a period of five (5) days, commencing at 7:00 a.m. November 21, 1949, and terminating at 7:00 a.m. November 26, 1949.

ERWIN B. HOCK
Director.

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

In the Matter of the Seizure on) Case No. 7515
September 21, 1949 of a quantity of)
alcoholic beverages, and various)
furnishings, fixtures and equipment)
at a restaurant located at 9 (11)) ON HEARING
Sheffield Street, in the City of) CONCLUSIONS AND ORDER
Newark, County of Essex and State)
of New Jersey.)
- - - - -)

Saul C. Schutzman, Esq., Attorney for Jean Sorrentino.
Sol L. Kesselman, Esq., Attorney for Atlantic Automatic Music Co.
Nathan D. Weiss, Esq., Attorney for William Castagno Ice Cream Co., Inc.
Workers Finance Company, by J. J. Zubris, General 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, and various furnishings, fixtures and equipment, itemized in a schedule attached hereto, seized on September 21, 1949 at a restaurant located at 9 (11) Sheffield Street, Newark, New Jersey, constitute unlawful property and should be forfeited.

It appears that the seizure was made because of alleged unlawful sales of wine in the restaurant on August 31, 1949 and September 21, 1949 to ABC agents.

When the matter came on for hearing pursuant to R.S. 33:1-66, Atlantic Automatic Music Co. applied for return of a music machine, and William Castagno Ice Cream Co., Inc. applied for return of an ice cream cabinet. Workers Finance Company did not present any claim when it developed that its mortgage purporting to cover the chattels in the restaurant was executed by a person who was not the owner of the establishment.

The facts, according to the ABC agents, and not disputed by the claimants, are that on August 31, 1949, two agents entered the restaurant, ordered food and two glasses of wine, which were served to them by Angelina Giovanello, a waitress. The agents paid her for the food and wine. On September 21st these agents returned, ordered food from Angelina Giovanello, and during the course of their meal were served by her with eight glasses of wine, for which they paid her.

The agents then disclosed their identity, and seized 27 bottles of beer which were in a cooler near the kitchen, one gallon jug of wine and two bottles of other alcoholic beverages which were in the kitchen, and the fixtures, furnishings and equipment of the restaurant.

Angelina Giovanello told the agents that she was managing the restaurant for Jean Sorrentino, alleged owner of the restaurant. Neither Angelina Giovanello nor Jean Sorrentino held a license authorizing either of them to sell or serve alcoholic beverages, and the restaurant was not licensed for the sale of alcoholic beverages.

The facts in the case justify the conclusion that the seized beer and wine were intended for unlawful sale and hence are illicit. R.S. 33:1-1(i). Such illicit alcoholic beverages and the equipment and fixtures seized therewith in the restaurant constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66. Counsel for Jean Sorrentino does not contest this aspect of the case. His appearance, in the main, was to aid the claimants to obtain return of their property.

The evidence presented establishes that Atlantic Automatic Music Co. is the owner of the seized music machine. It has had a machine in the restaurant for about five years. The account was in the name of "Sardellas Restaurant", the name on the window of the restaurant. The person who went there periodically to service the machine testified that he usually was at the place in the morning, before the restaurant was open for business and did not observe any alcoholic beverages on display. He was there on a few occasions in the evening, when there were some patrons there, but did not at any time observe any sales or service of alcoholic beverages to such patrons.

The ice cream concern has established that it is the owner of the seized ice cream cabinet, and presented a document dated April 1, 1949, evidencing the loan of such cabinet to "Sardella's Restaurant". The person who delivered ice cream to the restaurant testified that he did not, at any time, see any alcoholic beverages on display there, and that there were no customers in the place at the time of such deliveries.

The establishment appeared to be, and actually was a restaurant. So far as appears, neither Angelina Giovanello nor Jean Sorrentino have any previous criminal record. The music machine and ice cream cabinet were placed in the restaurant in the normal course of business. Alcoholic beverages were not openly displayed, and there is nothing to indicate that the claimant should have suspected that unlawful alcoholic beverage activities were being carried on in the restaurant. I am satisfied that the claimants acted in good faith, and acted as reasonably prudent persons. Hence, I shall recognize their claims and return the music machine and the ice cream cabinet to the respective claimants on payment of the costs of seizure and storage of such articles. R.S. 33:1-66(f).

Accordingly, it is DETERMINED and ORDERED that if on or before the 28th day of November, 1949, Atlantic Automatic Music Co. and William Castagno Ice Cream Co., Inc. pay the costs of the seizure and storage of the music machine and ice cream cabinet respectively, the music machine will be returned to the Atlantic Automatic Music Co. and the ice cream cabinet will be returned to William Castagno Ice Cream Co., Inc.; and it is further

DETERMINED and ORDERED that the balance of the seized property, more fully described in Schedule "A" attached hereto, including the cash and the currency in the vending machines, constitute unlawful property and 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 Director of the Division of Alcoholic Beverage Control.

ERWIN B. HOCK
Director.

Dated: November 16, 1949.

SCHEDULE "A"

- 27 - bottles of beer
- 1 - gallon jug of wine
- 2 - bottles of other alcoholic beverages
- 20 - tables
- 73 - chairs
- 1 - A.M.S. Music Machine Model #500, Serial #295, and currency therein
- 1 - Emerson Electric Fan #S60SA1
- 3 - hat and coat racks
- 1 - cigarette vending machine #12608, Serial #74872 and currency therein
- 1 - buffet
- 1 - Cash Register, #263906-737 and \$12.35 in cash
- 1 - Silex gas stove
- 1 - cabinet
- 2 - gas stoves
- 1 - Electric Products Refrigerator
- 1 - electric wall clock
- 4 - mirrors
- 3 - Venetian blinds
- 1 - Frigidaire
- 1 - deep freezer
- 1 - Coca Cola cooler
- 1 - Westinghouse Electric fan
- 2 - 2-burner electric stoves
- Miscellaneous restaurant equipment and foodstuffs, as itemized in an inventory in the file.

3. DISQUALIFICATION - APPLICATION TO LIFT - ENGAGING IN ALCOHOLIC BEVERAGE BUSINESS MORE THAN FIVE YEARS AFTER APPLICANT ADVISED THAT HE WAS INELIGIBLE - APPLICATION TO LIFT DENIED, WITH LEAVE TO REAPPLY AFTER DECEMBER 18, 1949.

In the Matter of an Application)
to Remove Disqualification)
because of a Conviction, Pursuant)
to R. S. 33:1-31.2.)
Case No. 800.)
-----)

CONCLUSIONS

BY THE DIRECTOR:

On September 22, 1938 petitioner was ruled ineligible to obtain a solicitor's permit because of his convictions of crimes involving moral turpitude. Re Case No. 230, Bulletin 272, Item 3. The petitioner has filed the within petition to remove any disqualification that presently exists because of his criminal record. Petitioner's record is clear since January 1938, with the exception of October 17, 1943 when petitioner was held in contempt by a Judge of a Court of Domestic Relations. Nothing appears to have been done by the court, however, as a result of the contempt order.

Petitioner had been employed as an expediter for several companies from 1938 until 1945. Since 1945 and until October 14, 1949, petitioner has worked, respectively, in two licensed premises in the capacity of manager and bartender.

Petitioner produced three witnesses (a lawyer and two businessmen) who testified that they have known petitioner for fifteen or more years and that he bears a reputation for being a law-abiding person in the community in which he resides.

The Police Department of the community in which petitioner lives has indicated that there are no investigations or complaints involving petitioner at the present time.

Ordinarily, I would be disposed to grant relief to the petitioner were it not for the fact that the petitioner became associated with the alcoholic beverage industry in the capacity of manager and bartender on licensed premises for a period of approximately five years, despite the above mentioned ruling that he was ineligible to do so. I shall take into consideration that more than five years elapsed before petitioner accepted employment on a licensed premises. Under all of the circumstances, I shall deny petitioner's present application, with leave to file a new petition after December 18, 1949. If such an application is filed it will, of course, be considered on its merits.

ERWIN B. HOCK
Director.

Dated: November 18, 1949.

4. DISCIPLINARY PROCEEDINGS - STATE BEVERAGE DISTRIBUTOR LICENSEE - CHARGES ALLEGING VIOLATIONS OF RULE 3 OF STATE REGULATIONS NO. 17 DISMISSED BECAUSE OF ADOPTION OF POLICY SET FORTH IN BULLETIN 845, ITEM 6.

In the Matter of Disciplinary Proceedings against

JOHN, JOHN JR. & ARTHUR BOHL
T/a BOHL BEVERAGE COMPANY
Rear 79 Ridge Road
North Arlington, N. J.,

CONCLUSIONS
AND ORDER

Holders of State Beverage Distributor's License SBD-74, issued by the State Director of the Division of Alcoholic Beverage Control.

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

BY THE DIRECTOR:

Defendants plead non vult to charges alleging that, on September 17, 1948, and prior thereto, and again on November 12, 1948, they transported alcoholic beverages in their licensed vehicle, bearing transportation insignia, for which they had no bona fide invoices or manifests stating the name of the purchaser of each item of alcoholic beverages and the kind and quantity delivered in said vehicle to each purchaser, in violation of Rule 3 of State Regulations No. 17.

The drivers of the trucks containing the alcoholic beverages on the respective days in question did have a number of cards in the nature of a sales record, bearing the names and addresses of customers, the dates when deliveries had been made and the type of merchandise, together with the prices paid therefor.

Since the institution of these proceedings, I have indicated in Bulletin 845, Item 6 that in so far as state beverage distributor licensees are concerned, deliveries of alcoholic beverages made to consumers will meet the requirements of Rule 3 of State Regulations No. 17 if the operator of the "beer route" has in his possession, when making deliveries to regular customers who desire periodic deliveries on standing orders, a route card bearing the name, address and standing order of the customer, and having space thereon in which may be entered at the time of delivery (1) the date of delivery, (2) the quantity delivered, (3) size of container delivered, (4) brand delivered and (5) price charged.

In view of the fact that defendants have substantially met the requirements of Rule 3 of State Regulations No. 17 as presently existing, in all fairness, the proceedings referred to herein will be considered dismissed. Cf. Bulletin 849, Items 1 and 3.

Accordingly, it is, on this 21st day of November, 1949,

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

ERWIN B. HOCK
Director.

5. APPELLATE DECISIONS - GRANT LUNCH CORP. v. NEWARK AND HARRY G. COHEN, ASSIGNEE FOR THE BENEFIT OF CREDITORS OF HUB GRILL, INC.

GRANT LUNCH CORPORATION,)

Appellant,)

-vs-

ON APPEAL
O R D E R

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY OF)
NEWARK, and HARRY G. COHEN,)
Assignee for the Benefit of)
Creditors of Hub Grill, Inc.,)

Respondents.)

Kanter and Kanter, Esqs. and Kasen, Schnitzer & Kasen, Esqs., by
Morris M. Schnitzer, Esq., Attorneys for Appellant.
Charles Handler, Esq., by George B. Astley, Esq., Attorney for
Respondent Municipal Board.
William A. Consodine, Esq., Attorney for Respondent Harry G. Cohen,
Assignee.
Harold Simandl, Esq. and Sidney Simandl, Esq., Attorneys for an
Assignor.

BY THE DIRECTOR:

This is an appeal from the action of respondent Municipal Board whereby it transferred to appellant, from respondent Harry G. Cohen, Assignee, a plenary retail consumption license for premises at 64-66 Market Street, Newark. The license in question was originally held by The Stall, Inc., the name of which corporation was changed to Hub Grill, Inc., and Harry G. Cohen was thereafter appointed as assignee for the benefit of creditors of Hub Grill, Inc.

The sole ground of appeal was that the appellant had no right of possession of the premises at 64-66 Market Street and, hence, that the transfer of the license was improper.

It now appears that the right of possession of said premises was available to appellant and, therefore, appellant has consented to the entry of an order affirming the action of respondent Municipal Board. No reason appearing to the contrary,

It is, on this 21st day of November, 1949,

ORDERED that the action of respondent Municipal Board, in transferring the plenary retail consumption license for 64-66 Market Street, Newark, to appellant Grant Lunch Corporation, be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Director.

6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE AND RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MITCHELL J. & LILLIAN LAMBERT)
T/a LAMBERT'S CAFE)
1427 South 9th Street)
Camden, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-139, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)

-----)
Mitchell J. & Lillian Lambert, Defendant-licensees, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendants pleaded non vult to charges alleging that (1) on Sunday, October 30, 1949, they sold alcoholic beverages during prohibited hours, in violation of a local ordinance, and (2) on said date they sold alcoholic beverages in an original container for off-premises consumption, in violation of Rule 1 of State Regulations No. 38.

On the date aforesaid, at about 11:25 a.m., ABC agents apprehended a woman with a pint bottle of whiskey as she came out of defendants' licensed premises. The local ordinance prohibits the sale of alcoholic beverages on Sunday, and State Regulations No. 38 prohibits the sale of alcoholic beverages in original containers for off-premises consumption on Sunday.

Defendant Mitchell J. Lambert has a prior record. On April 14, 1943, his license was suspended by the State Commissioner of Alcoholic Beverage Control for ten days after he pleaded guilty to charges alleging that he was a "front" for his father, Conrad Lambert (Bulletin 563, Item 6). However, because of the length of time which has elapsed since the prior dissimilar violation, I shall not consider the prior record in fixing the period of suspension herein. I shall suspend defendants' license for twenty days, less five days for the plea, making a net suspension of fifteen days. Cf. Re Wasilik, Bulletin 608, Item 10.

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

ORDERED that Plenary Retail Consumption License No. C-139, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Mitchell J. & Lillian Lambert, t/a Lambert's Cafe, 1427 South 9th Street, Camden, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. November 30, 1949, and terminating at 2:00 a.m. December 15, 1949.

ERWIN B. HOCK
Director.

7. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against GEORGE SCHOLTZ T/a WALLINGTON WINE & LIQUOR STORE 103 Johnson Avenue Wallington, N. J.,

Holder of Plenary Retail Distribution License D-2, issued by the Mayor and Council of the Borough of Wallington, and transferred during the pendency of these proceedings to FRANK ZIELONKA T/a FRANK'S WINES & LIQUORS, for the same premises.

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

BY THE DIRECTOR:

Defendant has pleaded non vult to charges as follows:

"1. In your application dated June 11, 1949, filed with the Mayor and Council of Wallington, upon which you obtained your current plenary retail distribution 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 Frank Zielonka was so interested in that he was the real and beneficial owner of the licensed business; said false statement being in violation of R.S. 33:1-25.

"2. From on or about January 3, 1949 until the present time, you knowingly aided and abetted Frank Zielonka to exercise, contrary to R.S. 33:1-26, the rights and privileges of your successive plenary retail distribution licenses; thereby yourself violating R.S. 33:1-52."

The file herein discloses that defendant, George Scholtz, a veteran of World War II, applied for and on January 3, 1949, obtained a plenary retail distribution license, a renewal of which was granted to him for the present licensing year. There is no doubt that Frank Zielonka, a non-veteran who is married to a sister of defendant's wife, was and is the real owner of the business and that defendant had and has no interest therein. The sole apparent reason for the "front" and the false answer in the application seems to be that both parties believed that a veteran would have a much better chance of obtaining a license than a non-veteran.

On November 14, 1949, the license was transferred by the local issuing authority to Frank Zielonka, subject to the outcome of these disciplinary proceedings and to any penalty imposed herein. Apparently Frank Zielonka is and always has been fully qualified to hold a liquor license in this state.

CONCLUSIONS AND ORDER

While the transfer apparently corrects the illegal situation and prevents a continuation of the illegal operation, it does not change the fact that the law was violated and that proper punishment must be imposed. I shall suspend the license for twenty days. Re Russo, Bulletin 741, Item 4.

Accordingly, it is, on this 21st day of November, 1949,

ORDERED that Plenary Retail Distribution License D-2, issued by the Mayor and Council of the Borough of Wallington to George Scholtz, t/a Wallington Wine & Liquor Store, for premises 103 Johnson Avenue, Wallington, and transferred during the pendency of these proceedings to Frank Zielonka, t/a Frank's Wines & Liquors, for the same premises, be and the same is hereby suspended for a period of twenty (20) days, commencing at 9:00 a.m. November 28, 1949, and terminating at 9:00 a.m. December 18, 1949.

ERWIN B. HOCK
Director.

8. APPELLATE DECISIONS - HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION v. WEST NEW YORK AND INNOCENTI.

HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION,)
Appellant,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

BOARD OF COMMISSIONERS OF THE TOWN OF WEST NEW YORK, and ANGELO INNOCENTI,)
Respondents.)

Harold Feinberg, Esq., Attorney for Appellant.
Anthony J. Armore, Esq., Attorney for Respondents.

BY THE DIRECTOR:

This is an appeal from the action of respondent Board of Commissioners in granting a person-to-person and place-to-place transfer of a plenary retail consumption license from Willnet Bar & Grill, Inc. to respondent Angelo Innocenti, and from premises 5301-5 Bergenline Avenue to 5508 Hudson Boulevard, West New York.

Appellant alleges, in substance, as grounds of appeal that (1) the premises for which the license is sought are unfit for the purpose of a liquor establishment; (2) there are sufficient outlets in the vicinity to adequately service the needs and convenience of the public; and (3) the granting of the transfer to respondent Angelo Innocenti, who was formerly an officer, director and stockholder of Boulevard Wines, Inc., holder of a plenary winery license, and whose wife, Mary Innocenti, is the present president and major stockholder of said corporate licensee, was contrary to the provisions of the Alcoholic Beverage Law.

The respondents deny all of the allegations set forth by appellant as grounds for reversal and allege that the transfer was made in good faith and in a proper exercise of sound discretion.

Appellant produced no evidence to substantiate the allegations in the petition of appeal that (1) the premises in question were unfit for use as a liquor establishment, or that (2) there was no necessity

for or convenience to be served by the licensee at the premises in question.

As to (3): It appears from the evidence presented in the instant case that respondent Angelo Innocenti was secretary, a member of the Board of Directors, and the holder of one share of stock in Boulevard Wines, Inc., a corporation, until July 30, 1949. On that date he resigned as secretary and as a member of the Board of Directors of the said corporate licensee. The share of stock of which he was owner, according to the testimony adduced herein, was transferred to his wife, Mary Innocenti, for a valuable consideration. On July 30, 1949, by virtue of mesne conveyances, the premises 5506 Hudson Boulevard in which the plenary winery business is conducted were conveyed to Mary Innocenti, and the premises 5508 Hudson Boulevard in which the plenary retail consumption business is now conducted were conveyed to respondent Angelo Innocenti. On August 25, 1949, the respondent Board granted the transfers which are involved in the present appeal.

Mary Innocenti is the president and major stockholder of Boulevard Wines, Inc., the holder of a plenary winery license in the State of New Jersey. Respondent, Angelo Innocenti, her husband, is ineligible to have any interest in the wholesaling of alcoholic beverages in New Jersey by reason of being the holder of a plenary retail consumption license. R.S. 33:1-43. The mere fact that he is the husband of Mary Innocenti does not, in and of itself, prevent him from obtaining a retail license in New Jersey. Re Rosenberg, Bulletin 125, Item 1. Such a situation must, however, be scrutinized with the utmost care to the end that full and bona fide compliance is made both with the letter and the spirit of the article cited above.

Appellant produced as its witnesses respondent Angelo Innocenti and Mary Innocenti in an attempt to elicit information that might disclose some evidence that the respondent Angelo Innocenti is still associated in some capacity with Boulevard Wines, Inc. However, neither of the witnesses gave testimony that might tend to indicate in any manner that respondent Angelo Innocenti has any interest whatsoever in the plenary winery license. In fact, the aforesaid appellant's witnesses steadfastly denied that respondent Angelo Innocenti is in anywise connected, directly or indirectly, in the plenary winery business operated by Mary Innocenti.

After a careful scrutiny of the entire record herein, I am satisfied that the appellant failed to establish that the action of the respondent issuing authority was erroneous and should be reversed.

Accordingly, it is, on this 28th day of November, 1949,

ORDERED that the action of the respondent Board of Commissioners be and the same is hereby affirmed and that the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Director.

9. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - FALSE ANSWER IN APPLICATION - CHARGE DISMISSED AS TO ALLEGED "FRONT" FOR MORTGAGEE IN POSSESSION - CHARGE SUSTAINED AS TO INDIVIDUAL NON-LICENSEE RETAINING PROFITS FROM SALE OF ALCOHOLIC BEVERAGES - ILLEGAL SITUATION AS TO INDIVIDUAL CORRECTED - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against LAKEWOOD COUNTRY CLUB Hope Road Lakewood, N. J.,

CONCLUSIONS AND ORDER

Holder of Club License CB-2 for the 1947-48 licensing period, and Club License CB-1 for the 1948-49 and 1949-50 licensing periods, issued by the Township Committee of the Township of Lakewood.

Stoffer & Jacobs, Esq., by Joseph M. Jacobs, Esq., Attorneys for Defendant-licensee. William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant was served with charges alleging that:

"1. In your application dated June 2, 1947, filed with the Township Committee of Lakewood, and upon which you obtained your current club license, you falsely stated 'No' in answer to Question 29, which asks: 'Has any individual, partnership, corporation or association, 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 Lakewood Hotel and Land Association and Otto Doeltz were so interested as the real and beneficial owners of the licensed business; said false statement being in violation of R.S. 33:1-25.

"2. In your aforesaid application for license, you falsely stated 'No' in answer to Question 30, which asks: 'Have you agreed to pay the club steward, club manager, 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 Lakewood Hotel and Land Association and Otto Doeltz to retain all of the profits derived from the licensed business; said false statement being in violation of R.S. 33:1-25.

"3. From in or about 1938 until the present time you knowingly aided and abetted the Lakewood Hotel and Land Association, and from April 15, 1947 until the present time you knowingly aided and abetted Otto Doeltz, to exercise, contrary to R.S. 33:1-26, the rights and privileges of your successive club licenses; in violation of R.S. 33:1-52."

The defendant frankly admitted the truth of the charges so far as they relate to Otto Doeltz, but denied them as to the Lakewood Hotel and Land Association.

It appears that the Association, for many years last past, has held a large mortgage upon the real property where the licensed premises are located. Upon default of the mortgage in 1938, the

Association assumed control of the property in a capacity tantamount to that of a mortgagee in possession. While the investigative reports and statements taken from various witnesses, together with other documentary evidence, indicate that the Association exerted an uncommon measure of supervision over the business conducted by the defendant, with the apparent acquiescence of its officers, a careful consideration of all the evidence fails to convince me that the Association held such a prohibited interest in the club's license and business conducted thereunder as would warrant a finding of guilt under any of the three charges aforesaid. The method of operating the licensed business, however, is not wholly to be condoned. Further discussions with the officers of the Association and the defendant will be required in an effort to ensure that the conduct of the business will be completely compatible with the spirit, as well as the letter, of the Alcoholic Beverage Law.

With respect to Doeltz, it is undisputed that, by a written agreement entered into in March 1947, the defendant "farmed out" its license to him under an arrangement whereby, in consideration for a flat annual rental, the defendant virtually leased its license to him and permitted him to retain the entire income of the licensed business. This unlawful arrangement renders the defendant guilty of the charges herein so far as they pertain to Otto Doeltz.

Since the institution of these proceedings, the defendant has entered into a new and permissible agreement with Doeltz, under which the latter has been hired as steward for the club at a stipulated salary.

All of the attendant circumstances considered, a ten-day penalty will be imposed. Cf. Workmen's Circle Educational Center of Newark, Bulletin 816, Item 2.

Accordingly, it is, on this 28th day of November, 1949,

ORDERED that Club License CB-1, issued by the Township Committee of the Township of Lakewood for the current licensing year to Lakewood Country Club, for premises on Hope Road, Lakewood, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. December 5, 1949, and terminating at 2:00 a.m. December 15, 1949.

ERWIN B. HOCK
Director.

10. APPELLATE DECISIONS - GROUCHY OSCAR, INC. v. LODI.

GROUCHY OSCAR, INC., trading as)
FUN HOUSE,)
Appellant,)

-vs-

MAYOR AND COUNCIL OF THE)
BOROUGH OF LODI,)
Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

Louis A. Mounier, Jr., Esq., Attorney for Appellant.
Charles S. Perrino, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby it suspended appellant's plenary retail consumption license for a period of eight days after it had found appellant guilty in disciplinary proceedings of the charge hereinafter set forth. The licensed premises are located on Highway 6, Lodi.

Upon the filing of the appeal I entered an order herein on October 14, 1949, staying respondent's order of suspension until the entry of a further order herein. R.S. 33:1-31.

On September 27, 1949, respondent served upon appellant a notice of a charge alleging that:

"On September 9th, 1949, in the Borough of Lodi, County of Bergen and State of New Jersey, contrary to Section 2 of Ordinance #668 entitled 'An Ordinance to Amend an Ordinance Entitled "An Ordinance to License and Regulate the Sale of Alcoholic Beverages in the Borough of Lodi and Providing Penalties for the Violation Thereof"', you did allow, permit and suffer the sale of alcoholic beverages or suffer the consumption of the same by person or persons unknown on the licensed premises after the hour set forth in said Ordinance and contrary thereto."

A hearing upon said charge was held by respondent, with the result set forth above. In accordance with the provisions of Rule 8 of State Regulations No. 15, this appeal has been submitted, by stipulation, upon the transcript of the testimony taken at the hearing held by respondent Mayor and Council.

Section 2 of Ordinance 668 of the Borough of Lodi provides:

"No licensee shall sell, serve, deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, or suffer the consumption of any alcoholic beverage on the licensed premises, on New Year's Day, when it is a weekday, between the hours of 5:00 a.m. and 6:00 a.m.; on New Year's Day, when it is a Sunday, between the hours of 5:00 a.m. and noon; on other weekdays between the hours of 3:00 a.m. and 6:00 a.m.; on other Sundays between the hours of 4:00 a.m. and Noon.

"During the hours that sales are hereinabove prohibited, the entire licensed premises shall also be closed, but this closing of premises requirement shall not apply to hotels; to restaurants as defined in Revised Statutes 33:1-1t, to clubs licensed under Revised Statutes 33:1-12(5), or to other establishments where the principal business is other than the sale of alcoholic beverages."

At the hearing below, Sergeant Davis and Officer Chiodo, of the Lodi Police Department, testified that they entered appellant's premises on September 9, 1949, at 3:10 a.m. They further testified that, when they entered, eleven patrons, some of whom had beer or whiskey glasses in front of them, were seated at the bar and William Koth, president of Grouchy Oscar, Inc., was behind the bar. The officers admitted that they saw nobody drinking and that they did not check to see whether or not the glasses were empty. As Sergeant Davis testified:

"I just went there under orders to see that the place was closed up, and they wasn't closed up on the hour ***."

After the police officers ordered the patrons to "clear out", the officers immediately left the licensed premises.

The fact that eleven patrons were on the premises, as testified to by the officers, is not disputed by appellant's witnesses, but William Koth testified that he was not behind the bar. The explanation of the occurrence as given by Mr. Koth is that these patrons are members of a bowling club who, apparently, had been on the licensed premises for a few hours before the police officers entered. Koth testified that he had refused to sell any more drinks after approximately 2:47 a.m., and that in fact it was only 3:03 a.m. when the police officers entered. He admits that the glasses were on the bar, but contends that they were empty.

After reviewing the facts of this case, I conclude that there is no evidence that any sales of alcoholic beverages were made, or any consumption of alcoholic beverages permitted, on the licensed premises after 3:00 a.m., although it clearly appears that the licensed premises were not closed after 3:00 a.m. as required by the last paragraph of Section 2 of Ordinance 668.

Appellant argues that the action of respondent must be reversed because it is not guilty of the charge as served. Respondent argues that its action should be sustained because it appears that appellant violated the closing regulation set forth in the last paragraph of Section 2 of Ordinance 668. The difficulty with the argument made by respondent is that the charge did not allege a violation of the closing regulation. As was said in Jandoli v. Orange, Bulletin 233, Item 7:

"*** The charge made against him was confined to a single part of Rule 7 of which there was no proof of violation. The charge did not include the other part of the rule which, as the proof turned out, would have been applicable. No conviction may be broader than the charge with which a defendant is confronted."

Under the circumstances, I must reverse the action of respondent for the reason that the evidence does not support the charge as served. In view of the evidence, however, the respondent may wish to prepare and serve on the appellant a new charge, in proper form, alleging that the licensed premises were not closed as required by the last paragraph of Section 2 of Ordinance 668.

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

ORDERED that the action of respondent be and the same is hereby reversed, without prejudice to the right of respondent to institute additional disciplinary proceedings as hereinabove indicated.

ERWIN B. HOCK
Director.

11. APPELLATE DECISIONS - HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION v. BAYONNE AND BAY VIEW BAR & GRILL, INC.

HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION,

Appellant,

-vs-

BOARD OF COMMISSIONERS OF THE CITY OF BAYONNE, and BAY VIEW BAR & GRILL, INC.,

Respondents.

ON APPEAL
CONCLUSIONS AND ORDERS

Samuel Moskowitz, Esq., Attorney for Appellant.

Stephen F. Sladowski, Esq., Attorney for Respondent Board of Commissioners.

James L. Sweeney, Esq., Attorney for Respondent Bay View Bar & Grill, Inc.

BY THE DIRECTOR:

Appellant appeals from the action of respondent Board of Commissioners in transferring the plenary retail consumption license held by respondent Bay View Bar & Grill, Inc. from premises at 604 Avenue A to premises 23-25-27 West 25th Street.

Appellant alleges that the action of respondent Board was improper because the transfer was contrary to the provisions of a local ordinance, which prohibits, among other things, the transfer of a liquor license to premises within 500 feet of other licensed premises.

After a full hearing on the question raised by the appeal, all parties hereto filed formal requests with the Director asking that the action of the local issuing authority be reversed.

It appearing to my satisfaction that the action of the respondent Board was contrary to the provisions of the local ordinance aforesaid and no cause appearing to the contrary,

It is, on this 29th day of November, 1949,

ORDERED that the action of respondent Board of Commissioners granting the transfer, here appealed from, be and the same is hereby reversed; and it is further

ORDERED that said transfer be set aside and be and is hereby declared null and void, and that respondent Bay View Bar & Grill, Inc. forthwith cease all alcoholic beverage activity at 23-25-27 West 25th Street.

ERWIN B. HOCK
Director.

12. STATE LICENSES - NEW APPLICATIONS FILED.

Monte Carlo Wine Industries, Ltd.

345, 347 Delavan Street, New Brunswick, N. J.

Application for Limited Distillery License filed November 29, 1949.

Peoples Brewing Co. of Trenton

N.E. Corner Labor & Lamberton Sts., Trenton, N. J.

Application for Limited Brewery License filed December 1, 1949.