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

BULLETIN 704 MARCH 29, 1946.

TABLE OF CONTENTS

ITEM

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

BULLETIN 704 MARCH 29, 1946.

1. APPELLATE DECISIONS - REDBORD AND HERSHMAN v. ORANGE

PHILIP REDBORD and LOUIS B. HERSHMAN, t/a REDMAN'S CLUB CAFE, Appellants, -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF ORANGE, Respondent	ON APPEAL CONCLUSIONS AND ORDER

Abraham M. Herman, Esq., Attorney for Appellants.
Edmond J. Dwyer, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

The respondent found the appellants guilty of a charge alleging the sale and service of alcoholic beverages to a minor and imposed a thirty-day penalty against the appellants' consumption license. Hence this appeal.

The appellants contend that there was no legal evidence before the respondent to support its finding of guilt.

At the hearing held by respondent it was developed that on May 1, 1945, the date of the minor's eighteenth birthday, the minor joined her mother and the latter's companion at the appellants' tavern. After several hours at the licensed premises the companion had an altercation with the minor's mother. When the minor attempted to befriend her mother, she was assaulted by the companion. As a result, the minor made a criminal complaint against the companion founded upon a written statement given to the police. In this statement the minor, among other things, asserted that she was served several glasses of whiskey by the appellant Philip Redbord, who was the sole bartender on duty at the time. The statement of the companion included the allegation that he had purchased several drinks of whiskey for the minor.

On the witness stand, during the hearing below, both the minor and the companion repudiated their respective statements concerning the sale and service of whiskey to the minor, and both denied that she had consumed any alcoholic beverages at the tavern. In these denials, they were joined by the testimony of the mother. Thus, the only evidence before respondent to substantiate the charge was that contained in the two written statements.

The appeal hearing, which was conducted de novo, was practically a duplication of that which took place before the respondent. Once again, the minor, her mother and the companion denied that the appellants had sold or served any alcoholic beverages to the minor. The two statements were received in evidence but only for the limited

purpose of neutralizing the oral testimony given by the minor and the companion.

In this posture of the record, the charge against the appellants must be dismissed because of the complete absence of any competent evidence to substantiate the charge. While, generally, it may be said that administrative tribunals are not bound by the strict rules of evidence, there must, at least, be a residuum of legal evidence to support a determination made by such tribunal in disciplinary proceedings. Evidence which would not be competent in judicial proceedings may be received and considered by administrative agencies, but a decision may not be founded solely upon such evidence. The decision must be bottomed upon some competent legal evidence. Cf. Friese v. Nagle Packing Co., 110 N. J. L. 588.

The total lack of any competent legal evidence in this case necessitates that appellants be found not guilty of the charge. Reference should be made to an admission by the minor that she had taken a sip of a drink of whiskey, served to her mother, in order to relieve a toothache. There is, however, no testimony to indicate that the appellants had violated the provision that no licensee shall "allow, permit or suffer the consumption of alcoholic beverages by any such person (minor) upon the licensed premises." See Rule 1 of State Regulations No. 20.

I may add that the respondent was fully justified in instituting these proceedings upon the basis of the statements made by the minor and her mother's companion. The respondent could not, of course, anticipate that these statements would be repudiated upon the witness stand. However, while it is understandable that the respondent placed no credence upon the denials of these witnesses relative to the sale and service of liquor to the minor, the status of the record left the respondent, as the proceedings herein leave me, with no alternative other than to dismiss the charge brought against the appellants.

Accordingly, it is, on this 18th day of March, 1946,

ORDERED, that respondent's action in finding appellants guilty of the charge herein and suspending their license for a period of thirty days as a result thereof, be and the same is hereby reversed.

ALFRED E. DRISCOLL
Commissioner.

2. APPELLATE DECISIONS - RICHARTZ v. BELLMAWR.

JOSEPH F. RICHARTZ,)
Appellant,)
-vs-) ON APPEAL
BOROUGH COUNCIL OF THE BOROUGH OF BELLMAWR,) O R D E R
Respondent)

William T. Cahill, Esq., Attorney for Appellant.
Thomas M. Madden, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from respondent's refusal to renew the license of appellant for premises at Browning Road and Spruce Avenue in the Borough of Bellmawr, County of Camden.

At the hearing herein, several objectors from the neighborhood appeared and testified that the premises known as Joe's Cafe were operated in a noisy manner, thereby disturbing residents in the neighborhood. Approximately the same number of neighbors and patrons testified that the tavern was operated properly and that the noise and disturbance were neither excessive nor unusual.

It appears that the tavern is located in a neighborhood that is substantially residential. The premises have been licensed as a tavern for many years, but only recently to appellant. One of the usual causes for objection to a tavern, particularly in a residential neighborhood, is the noise incident to the operation of the business in the late hours of the night and until the closing hour.

A proper and fair disposal of such objections is often difficult, particularly so when the objections are against a renewal. Possibly, there should never have been a tavern at this location. After having carefully considered the record, I was prepared to affirm the decision of the municipal issuing authority when I was advised by counsel for both parties that they had reached an agreement that made a decision on the merits unnecessary.

A stipulation supported by a resolution of the respondent asks that the cause be remanded to the respondent for further consideration.

This decision is not intended to deprive the respondent municipality of its right and duty to carefully consider on the merits any application for a transfer of appellant's license from one place to another. It is apparent, however, that the present location is not a desirable one.

Accordingly, it is, on this 18th day of March, 1946,

ORDERED, that the proceedings herein be remanded to respondent for its further consideration consistent with the stipulation and the resolution adopted by respondent and that, if any license is issued to the appellant herein for the premises in question, it shall be issued subject to the following special conditions set forth in said resolution and to be inserted in the license certificate:

a. That the licensed premises be transferred from place to place, namely, from its present location at Browning Road and Spruce Avenue to a new location on the Westerly side of Black Horse Pike at the Southerly boundary line of the Borough of Bellmawr, on or before the 15th day of April, 1946.

b. That the licensee, Joseph F. Richartz, will do all in his power to keep peace and quiet in the present licensed premises located at Browning Road and Spruce Avenue and the surrounding neighborhood, and in particular that no music shall be played in the said licensed premises, either by mechanical juke box, victrola or radio, or any other musical instrument, after 1:00 a.m.

ALFRED E. DRISCOLL
Commissioner.

3. DISCIPLINARY PROCEEDINGS - PERMITTING SERVICE AND CONSUMPTION OF ALCOHOLIC BEVERAGES AND FAILURE TO CLOSE LICENSED PREMISES DURING PROHIBITED HOURS, IN VIOLATION OF RULES 1 AND 2 OF STATE REGULATIONS NO. 40 - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR A PERIOD OF 5 DAYS.

In the Matter of Disciplinary Proceedings against

CHARLES RUSCIANO
T/a PLEASANT INN
Highway 35
Point Pleasant (Borough), N.J.,

Holder of Plenary Retail Consumption License C-1 issued by the Mayor and Council of the Borough of Point Pleasant.

CONCLUSIONS AND ORDER

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

BY THE COMMISSIONER:

Defendant-licensee pleads not guilty to charges alleging that:

"1. Between 12 o'clock midnight, Saturday, March 3, 1945 and 7:00 a.m. Sunday, March 4, 1945, viz., until at least 1:45 a.m. of the latter date, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages and permitted the consumption of alcoholic beverages upon your licensed premises, in violation of Rule 1 of State Regulations No. 40.

"2. Between 12 o'clock midnight, Saturday, March 3, 1945, and 7:00 a.m. Sunday, March 4, 1945, viz., until at least 1:45 a.m. of the latter date, you failed to have your entire licensed premises closed and you permitted persons other than yourself and your bona fide employees to be and remain on the licensed premises, in violation of Rule 2 of State Regulations No. 40."

Two investigators of the Department of Alcoholic Beverage Control testified that at 1:30 a.m. on March 4, 1945, they observed a party in progress in a dining room which is part of defendant's licensed premises. The door leading to the barroom, adjoining the dining room, was found by the agents to be locked. The ABC agents entered the dining room and seized a partly filled bottle and several glasses of whiskey which were on the table. A large birthday cake and about 150 birthday greeting cards were on the table nearby.

The investigators further testified that inquiry by them disclosed that the licensee had been given a birthday party by his relatives and a few close friends.

The licensee and his witnesses testified that all patrons had left the barroom of his licensed premises prior to midnight, and that no sales of alcoholic beverages had been made after that time. The licensee admitted that the birthday party had been held in the dining room, but said that he thought he was not in any way violating the State Regulations because it was a private party. The licensee's interpretation of the Regulations was clearly erroneous.

Since defendant's dining room is part of the licensed premises, the service and consumption of alcoholic beverages therein after 12:00 midnight, and the failure to close the same as required, constituted a violation of Rules 1 and 2 of State Regulations No. 40. I have no alternative other than to see that the law is strictly obeyed. On the testimony adduced herein I find that the licensee is technically guilty of both charges.

Defendant-licensee has no previous adjudicated record. There are mitigating circumstances in this case. It appears that the birthday party was clearly a family affair; that the public was excluded from the licensed premises after midnight, and that alcoholic beverages were not "sold" to the public. I have accordingly decided to suspend the license for a period of five days (instead of for the normal fifteen-day period).

Accordingly, it is, on this 18th day of March, 1946,

ORDERED, that Plenary Retail Consumption License C-1, issued by the Mayor and Council of the Borough of Point Pleasant to Charles Rusciano, t/a Pleasant Inn, for premises on Highway 35, Point Pleasant (Borough), be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. April 1, 1946, and terminating at 2:00 a.m. April 6, 1946.

ALFRED E. DRISCOLL
Commissioner.

4. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL SALES OF ALCOHOLIC BEVERAGES BY SOCIAL CLUB - STOCK OF ALCOHOLIC BEVERAGES AND EQUIPMENT IN BARROOM AND GAME ROOM ORDERED FORFEITED - FURNITURE AND FURNISHINGS OF PUBLIC SOCIAL ROOMS RETURNED.

In the Matter of the Seizure on August 2, 1945 of a quantity of alcoholic beverages, a bar, $565.06 in cash, slot machines, furniture, fixtures and furnishings, and a Plymouth truck, at the Riverton Golf and Country Club, located at Thomas and Park Avenues, in the Borough of Riverton, County of Burlington and State of New Jersey.	Case No. 6870 ON HEARING CONCLUSIONS AND ORDER

Edward J. Inglesby, Esq., Attorney for Riverton Golf and Country Club, Inc.
Harry Castelbaum, Esq., appearing for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic beverages, a bar, $565.06 in cash, slot machines, furniture, fixtures and furnishings, and a Plymouth truck, itemized in a schedule hereinafter referred to, seized on August 2, 1945, at the Riverton Golf and Country Club located at Thomas and Park Avenues, Riverton, New Jersey, constitutes unlawful property and should be forfeited.

The motor vehicle and the club room, lobby, and restaurant furniture, fixtures and furnishings, were left at the club because the Riverton Golf and Country Club, Inc. paid $3500.00, the appraised retail value of such property, under protest, pursuant to R. S. 33:1-66. The club has stipulated that the Commissioner shall determine, in this proceeding, whether this money should be returned to it. The alcoholic beverages, bar, barroom equipment, and slot machines were removed from the premises.

The seizure was made after ABC agents, in company with Federal ATU agents, had, on the day in question, purchased alcoholic beverages at the premises. The club does not hold any license authorizing it to sell or serve alcoholic beverages.

The entire equipment of the club, its stock of merchandise and alcoholic beverages, its cash receipts, its coin operated gambling devices and its truck, were seized because it appeared to be an aggravated case, in that the club continued to sell alcoholic beverages unlawfully despite the seizure of alcoholic beverages in 1944 at the premises for a similar offense.

Roy Peterson, the club steward, was arrested in 1944 on charge of unlawful sale of alcoholic beverages. He was again arrested on the date of the instant seizure on a similar charge. The Grand Jury of Burlington County indicted Peterson, the Riverton Golf and Country Club, Inc. and three of its officers and trustees. Peterson and the club have since entered a plea of non vult to the charges and each was fined $100.00, while the charges against the other persons were nolle prossed.

The seized alcoholic beverages were intended for sale without a license and hence are illicit. Illicit alcoholic beverages together with all fixtures and other personal property (including the receipts of the unlawful business) seized therewith in the building in which such illicit alcoholic beverages are found, are subject to forfeiture. R. S. 33:1-1(i) and (y), R. S. 33:1-2, R. S. 33:1-66.

When notified of the date of the seizure hearing, pursuant to R. S. 33:1-66, the Riverton Golf and Country Club, Inc., through its counsel, advised, in advance of such hearing, that it did not dispute the facts and that such facts warranted a formal determination that all of the seized property constituted unlawful property and was subject to forfeiture under the Alcoholic Beverage Law. However, counsel asserted that the club had acted in good faith and unknowingly violated the law and, furthermore, that forfeiture of the seized property would work an undue hardship, and hence sought return of all of the seized property.

The system used by the club in the sale of alcoholic beverages was to require its patrons to purchase a book of coupons. The steward would detach sufficient coupons to pay for the alcoholic beverages served. The club did not accept payment in cash for the alcoholic beverages.

The group of men who acquired the club in 1943 and owned and operated it at the time of the seizure maintain that they were of the honest belief that they did not need a license to sell or serve alcoholic beverages if they sold drinks only to members and their guests, and such drinks were paid for through the intermediate step of the purchase of a book of coupons and not by the actual payment of cash. The mere statement demonstrates its absurdity. No reasonable person could consider it other than a sale of alcoholic beverages, unlawful under the Alcoholic Beverage Law unless made pursuant to a license. Indeed, every delivery of an alcoholic beverage otherwise than by purely gratuitous title is a sale of alcoholic beverages. R. S. 33:1-1(w). A much less objectionable plan devised by a club to serve alcoholic beverages to its members in pre-prohibition days was held by the Supreme Court of this State to constitute a sale of alcoholic beverages. Newark v. Essex Club, 53 N. J. L. 99.

It is significant that in July 1945 these men obtained a Federal retail liquor dealer's special tax stamp although they were previously without one. This forcefully demonstrates that at least by then they knew that they could not operate their liquor business without a license.

The owners of the club further maintain that if their conception of the law was erroneous nevertheless they acted in good faith and unknowingly violated the law because they were guided by and relied upon assurances of former members of the "old" club, who told them that in 1933 they had checked with State and Federal law enforcement officials and had ascertained that the coupon book system did not violate any State or Federal law; that they merely carried on a practice of long standing, and therefore were innocent of intentional wrongdoing.

The operators of the club seemingly relied upon these representations to a considerable extent. However, they were not misled altogether, since two of the men were tavern owners who knew or should have known that they were engaging in the liquor business, and

in any event knew that the safest course in such matters was to ask the State Department of Alcoholic Beverage Control whether they were violating the law. No such inquiry was made, either of this Department or of any local law enforcement official.

Moreover, the seizure and arrest in 1944 at the club squarely put these persons on notice that the sale and service of alcoholic beverages there was illegal. It is no excuse to say that they thought the offense was that of serving a person not a member of the club or a guest of a member, and not that the entire system was illegal. If the owners of the club were sincerely of the opinion that they were not violating the liquor laws, it is natural to assume that they would have protested bitterly at the loss of the alcoholic beverages which were seized, and would have made a strenuous effort to ascertain the nature of the liquor law violation. Instead they studiously refrained from any contact with this Department, either by inquiry, or appearance at the hearing involving forfeiture of such alcoholic beverages.

Therefore, I cannot find that the owners and operators of the club at the time of the seizure acted in good faith or unknowingly violated the law.

However, it does not necessarily follow that both the cash deposited under protest, and the seized property in the Department's possession, must be forfeited. There are other aspects to the case which deserve serious consideration.

The club is an old and valuable asset to the community and is patronized by a reputable and respectable clientele. It has many legitimate functions, aside from the service of alcoholic beverages. Most of the patrons probably did not give the matter any thought, and those that did could properly assume that the persons in charge of its affairs were not selling alcoholic beverages in violation of the law.

It appears that for many years the service of alcoholic beverages was considered a vital adjunct to the operation of the club. The Borough of Riverton, in which the club is located, has not passed a regulation authorizing issuance of any liquor license. In the absence of such regulation, no license to sell alcoholic beverages at retail may be issued in the Borough. The new owners of the club sought to overcome this obstacle and met defeat.

The club and its steward were convicted in criminal court. The club will be required to pay $1,211.83 on assessment of the State Department of Taxation and Finance for beverage taxes.

The forfeiture of the furnishings of the public rooms, normally and openly devoted to the proper social purposes of the community, in addition to the forfeiture of the bar, barroom equipment, alcoholic beverages, $221.00 in cash receipts, $344.00 in cash in the slot machines and other property in the possession of the Department, would, indeed, be heaping Ossa upon Pelion.

In the case of Patrick v. Driscoll, 132 N. J. L. 478, the Supreme Court, in an opinion written by Mr. Justice Case, "conceded to the Commissioner a fair field to declare forfeit at least such articles as were adaptable for use in connection with the prohibited enterprise." The prohibited enterprise in this case was the sale of alcoholic beverages.

I am not required to forfeit blindly all personal property seized by the agents that may have been associated with the violation merely because its owner cannot establish his good faith and unknowing violation of the law.

The motor vehicle and the furnishings of the club's public rooms and the restaurant equipment, while to some extent adaptable for use in connection with the activities in the barroom, had a legitimate use and in fact was used by the citizens of Riverton entirely apart from the unlawful activities. Forfeiture of such property would seemingly impose a penalty out of proportion to the offense. Hence, the amount due to the State Department of Taxation and Finance from the Riverton Golf and Country Club, Inc. will be deducted from the sum of $3,500.00, representing the appraised value of such property, and the balance will be returned to the Riverton Golf and Country Club, Inc. All of the remaining seized property in the possession of the Department will be forfeited.

Accordingly, it is, on this 18th day of March, 1946, DETERMINED and ORDERED that there shall be deducted from the $3,500.00 deposited by Riverton Golf and Country Club, Inc. with the Commissioner of Alcoholic Beverage Control the sum of $1,211.83 due to the State Department of Taxation and Finance from said club, and that the balance of the money so deposited is to be returned to the Riverton Golf and Country Club, Inc.; and it is further

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 such property be sold, in whole or in part, at public sale for the use of the State, subject to the rules and regulations governing such sale, or be retained for the use of hospitals and State, county and municipal institutions, or destroyed, whichever the Commissioner may hereafter determine to be for the best interest of the State.

ALFRED E. DRISCOLL
Commissioner.

SCHEDULE "A"

7 - slot machines containing $344.00 in coins
48 - bottles of Haig & Haig 5 Star Whiskey
47 - bottles of White Horse Scotch Whiskey
26 - bottles of Harwood's Canadian Blended Whiskey
18 - bottles of St. Andrews Rum
12 - bottles of Merito Rum
10 - bottles of Walker's DeLuxe Bourbon Whiskey
8 - bottles of Schenley Gin
6 - bottles of Kinsey Whiskey
10 - bottles of A. P. Fonseca Brandy
5 - bottles of Hildick Brandy
4 - bottles of Paul Jones Blended Whiskey
9 - bottles of Marimba Rum
6 - bottles of Brookside Brandy
8 - bottles of Mohawk Sloe Gin
4 - bottles of Arrow Creme De Menthe
2 - bottles of Jacquin Creme De Menthe
1 - bottle of Hiram Walker Creme De Menthe
2 - bottles of Cointreau Liqueur
2 - bottles of Balzactine Liqueur
2 - bottles of Carstairs Whiskey (White Seal)
1 - bottle of Duckers County Apple Brandy
3 - bottles of Meyers Rum
4 - bottles of Haig & Haig Blended Scotch Whiskey
5 - bottles of Kings Treasure Blended Scotch Whiskey
2 - bottles of Argentine Vermouth, Dry
2 - bottles of Martini and Rossi Vermouth
1 - bottle of Caspro Grenadine Syrup
9 - bottles of Croix Royal Select Sherry
9 - bottles of Royal Muscatel
9 - bottles of Renault's California Port Wine
2 - bottles of Dubonnet Sweet Vermouth
1 - bottle of Chilean Vermouth
9 - bottles of Chateau Rhine Carb. Wine
1130 - bottles of Prior Beer
1 - bottle of Hiram Walker Triple Sec
1 - bottle of Forbidden Fruit Liqueur
1 - Pinch bottle Haig & Haig Whiskey
10 - bottles of Koh-i-noor Vermouth
1 - bottle of Southern Comfort
1 - bottle of Johnnie Walker Black Label
1 - bottle of Spring Hollow Whiskey
1 - bottle of Canadian Club Whiskey
1 - bottle of Vat 69 Scotch
1 - bottle of Schenley Distilled London Dry Gin
1 - bottle of Leroux Creme De Cacao
1 - bottle of Old Dutchess County Apple Brandy
1 - bottle of Dry Kummel
1 - bottle of Royal Garden Muscatel
1 - bottle of Jacquins Peach Brandy
1 - bottle of Orange Curacao
1 - bottle of Cinzano Chilean Vermouth
1 - bottle of Angostura Bitters
9 - packs Raleigh Cigarettes
10 - packs Camel Cigarettes
3 - packs Fatima Cigarettes
1 - pack Kool Cigarettes
11 - packs playing cards
48 - bottles of Camden Beer
240 - bottles of Pabst Blue Ribbon Beer
10 - bar stools
1 - cash register and cash box containing $221.06
1 - barrel of glasses
1 - main bar

5. RETAIL LICENSES - APPLICATION FOR TRANSFER OF PLENARY RETAIL CONSUMPTION LICENSE ISSUED BY THE COMMISSIONER DENIED.

In the Matter of an Application for the Transfer of Plenary Retail Consumption License C-117, issued by the Commissioner of Alcoholic Beverage Control, from

NICHOLAS BARBER

to

WALTER S. BIELICKY
T/a SOUTH BROOK TAVERN,

for Premises at cor. Main and Elm Street, South Bound Brook, N. J.

CONCLUSIONS

Frederick I. Pelovitz, Esq., Attorney for Applicant.
Philip Blacher, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

Nicholas Barber is a member of the Council of the Borough of South Bound Brook, the local issuing authority in that municipality. Because of that fact, License C-117, for the present fiscal year, was issued by the Commissioner of Alcoholic Beverage Control. R. S. 33:1-20.

On October 12, 1945, Nicholas Barber entered into a contract with Walter S. Bielicky wherein he agreed to sell to Bielicky the building in which the licensed premises are located for the sum of $35,000.00. In the contract the seller agreed to cooperate with the purchaser in obtaining the transfer of License C-117.

On October 22, 1945 Walter S. Bielicky filed with the Commissioner an application for the transfer of License C-117. The application bears the consent of Nicholas Barber to the transfer of the license to Walter S. Bielicky.

After the application for transfer was filed, a written objection was received and a hearing upon said objection was held on November 13, 1945. See Rule 5 of State Regulations No. 4, and Rules 8 and 9 of State Regulations No. 6.

At the hearing herein a resident of South Bound Brook testified that Walter S. Bielicky made certain statements with respect to his proposed conduct of the premises which cast serious doubt on his availability as a licensee. Another resident of South Bound Brook substantially corroborated this testimony. It appears also that Bielicky was arrested three times for assault and battery, although he has never been convicted of any crime, and that on October 15, 1944 a fight occurred outside of licensed premises which he then conducted in Bound Brook.

At the hearing Walter S. Bielicky denied the testimony of the two witnesses referred to above and stated, "I do know Mr. Barber ran a strictly man's bar. I am more modern and see no reason why a young lady, properly dressed, cannot come in and have a glass of beer." He testified that from July 1, 1943 to November 21, 1944 he was the holder of a plenary retail consumption license for premises located in Bound Brook, and that no disciplinary proceedings had ever been instituted against him while he held that license. He also testified that the disturbance which occurred on October 15, 1944 on the outside of his licensed premises in Bound Brook was caused by two patrons

whom he had asked to leave because they were becoming disorderly. He admitted that he had been arrested in 1937 and 1939 on charges of assault and battery, but investigation discloses that no indictment was found by the Grand Jury in either case. His last arrest for assault and battery took place on October 15, 1944, in connection with the disturbance referred to above, but the charge was dismissed by the local recorder.

The Chief of Police, the Mayor, and a number of business men of Bound Brook have certified that the applicant is a person of good character and that he bears a good reputation in that community.

At the hearing a certified copy of a resolution adopted by the Mayor and Council of the Borough of South Bound Brook, at a meeting held on November 9, 1945, was introduced into evidence. This resolution was adopted because I had requested from the local issuing authority an advisory opinion as to whether or not the transfer should be granted. The resolution recites that, after hearing arguments both favoring and opposing the application for transfer, the Council adopted a resolution to go on record as disapproving said transfer. Three Councilmen voted in favor of the resolution, one Councilman was excused from voting, and Councilman Barber took no part in the proceedings. The Mayor of South Bound Brook did not vote on the resolution.

The above resolution is entitled to great weight. R. S. 33:1-19 provides that "it shall be the duty of the governing board or body of each municipality *** to administer the issuance of all other licenses within their respective municipalities, in accordance with this chapter," and R. S. 33:1-24 provides, in effect, that it shall be the duty of such board or body to investigate applicants for retail licenses in their municipality.

Ordinarily Walter S. Bielicky would have had to apply to the local issuing authority of the Borough of South Bound Brook for a transfer of this license, and it is apparent that such an application would have been denied. Under the peculiar circumstances of this case, Bielicky has applied to me for a transfer of the license. The evidence does not show that he is disqualified from holding a license. It is not necessary for me to conclude herein that he is an unfit person to hold a license. It is sufficient to state that he was arrested on three occasions; that a disturbance was at least threatened on his former licensed premises, and that the evidence tends to show that he intends to operate a different type of business than the "strictly man's bar" operated by the present licensee. Under all the circumstances, I conclude that I should not force the local issuing authority to accept him as a retail licensee in the Borough of South Bound Brook. The principle of Home Rule should prevail in accordance with the provisions of the Alcoholic Beverage Law.

For the aforesaid reasons, the application to transfer the license is denied.

ALFRED E. DRISCOLL
Commissioner.

Dated: March 18, 1946.

3. DISCIPLINARY PROCEEDINGS - ON PETITION TO RECONSIDER PENALTY - ORDER MODIFYING PREVIOUS SUSPENSION ORDER.

In the Matter of Disciplinary Proceedings against

PULASKI CITIZENS CLUB, INC.
310-312 Elm Street
Perth Amboy, N. J.,

Holder of Plenary Retail Consumption License C-94, issued by the Board of Commissioners of the City of Perth Amboy.

On Petition

O R D E R

Francis N. Reps, Esq., Attorney for Defendant-petitioner.

BY THE COMMISSIONER:

Defendant has filed a petition requesting a modification of my previous order entered herein whereby its license was suspended for the balance of its term, effective October 31, 1945, at 2:00 a.m. Re Pulaski, Bulletin 683, Item 8.

Defendant does not question the fact that the suspension previously imposed was merited under the facts of the case. It bases its request for relief upon the ground that it is a sick-benefit and social organization, with 500 paid members, all of whom are adversely affected because the suspension of the liquor license renders difficult the maintenance of the sick-benefit fund of the organization. It is represented also that, in addition to its paid members, the membership includes 300 "returned and returning veterans" and that it has a women's auxiliary with a membership of approximately 500. I am advised also, by a letter recently received, that John B. Egan Post No. 663, Veterans of Foreign Wars, with a membership of 800, has arranged to share the quarters occupied by defendant club.

The petition further sets forth that all bartenders involved in the violations referred to in the previous Conclusions and Order have been dismissed, and that the club has resolved that the bar on the second floor shall not be reopened for the service of alcoholic beverages. Considering the large number of innocent persons affected by the suspension, I have decided to reduce the suspension to a peri of six months in lieu of the period previously fixed.

Accordingly, it is, on this 18th day of March, 1946,

ORDERED, that the Order entered herein be amended to read as follows:

"ORDERED, that Plenary Retail Consumption License C-94, issued by the Board of Commissioners of the City of Perth Amboy to Pulaski Citizens Club, Inc., for premises 310-312 Elm Street, Perth Amboy, be and the same is hereby suspended for a period of six months, effective October 31, 1945, at 2:00 a.m., and terminating April 30, 1946, at 2:00 a.m.

ALFRED E. DRISCOLL
Commissioner.

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary Proceedings against JOSEPH TORIO T/a METUCHEN GRILL 154 Main Street Metuchen, N. J., Holder of Plenary Retail Consumption License C-4 issued by the Borough Council of the Borough of Metuchen.	CONCLUSIONS AND ORDER

Joseph Torio, Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded non vult to a charge that he possessed illicit alcoholic beverages at his licensed premises, in violation of R. S. 33:1-50.

On January 26, 1946 an investigator of the State Department of Alcoholic Beverage Control seized one 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky" and two 4/5 quart bottles labeled "Mount Vernon Brand Straight Rye Whiskey", when his field tests disclosed that the contents of said three bottles were not genuine as labeled.

Subsequent analyses by the Department chemist verified the findings of the investigator.

The licensee denies any personal participation in or knowledge of the violation. He admits that his subsequent investigation leads him to the belief that a bartender who was then employed by him may have refilled the seized bottles. Licensees, however, are responsible for any "refills" found in their stock of liquor. Re Kurian, Bulletin 517, Item 2.

Defendant has no previous adjudicated record. I shall suspend his license for the minimum of twenty days. Re Zeidner and Cohen, Bulletin 680, Item 2.

Accordingly, it is, on this 22nd day of March, 1946,

ORDERED, that Plenary Retail Consumption License C-4, issued by the Borough Council of the Borough of Metuchen to Joseph Torio, t/a Metuchen Grill, for premises 154 Main Street, Metuchen, be and the same is hereby suspended for a period of twenty (20) days, commencing at 1:00 a.m. April 2, 1946, and terminating at 1:00 a.m. April 22, 1946.

ERWIN B. HOCK
Deputy Commissioner.

8. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE (DISQUALIFIED BY CRIMINAL RECORD) TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - LICENSE SUSPENDED FOR THE BALANCE OF ITS TERM.

In the Matter of Disciplinary Proceedings against

AMELIA BUCARO
T/a TRIANGLE TAVERN
4 Main Street
Lodi, N. J.,

Holder of Plenary Retail Consumption License C-24, issued by the Mayor and Council of the Borough of Lodi, and transferred during the pendency of these proceedings to

JOHN McDONALD
T/a MAY-MAC BAR & GRILL

for the same premises.

CONCLUSIONS AND ORDER

DiMaria & DiMaria, Esqs., by Anthony DiMaria, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

The defendant has pleaded non vult to charges alleging that she falsely concealed the interest of her husband, Michael Bucaro, in the licensed business operated under her license, in violation of R. S. 33:1-25; and thereby aided and abetted an unlicensed person to exercise the rights and privileges of her license, in violation of R. S. 33:1-52.

On September 1, 1945, defendant secured a plenary retail consumption license from the local issuing authority, pursuant to an application duly filed therefor, in which application she stated under oath that no one other than herself had any interest in the license or in the business to be carried on thereunder.

On January 10, 1946, both the defendant-licensee and her husband, Michael Bucaro, made voluntary statements to agents of the State Department of Alcoholic Beverage Control wherein they each admitted that the true and real owner of the licensed business was the husband of the defendant-licensee, Michael Bucaro. Michael Bucaro says that the license was applied for in his wife's name, rather than in his, "Because I was not eligible at the time because of a criminal record so the license was issued in my wife's name because I thought I might be turned down myself."

Subsequent to the issuance of the license, Michael Bucaro applied to the State Commissioner of Alcoholic Beverage Control, pursuant to R. S. 33:1-31.2, for a removal of his disqualification. At the hearing in reference to said application for removal he stated that he was not in any way "connected" with the business operated under the license issued to his wife. Depending upon his sworn testimony, his disqualification was removed by order dated September 25, 1945. Re Case No. 461.

However, no action was taken by Michael Bucaro or by defendant-licensee to correct the illegal "front" situation until after January 10, 1946, on which date he became aware of the Department's investigation. He then applied to the local issuing authority for a transfer of the license to his name -- which application was denied. The local issuing authority had the power to deny the application despite the removal of his disqualification. Re Chiaravalli, Bulletin 300, Item 15.

This is a particularly aggravated case; first, fraud was committed on the local issuing authority in falsely answering the question in the application for the license; and then a misleading statement was made in connection with the removal of Michael Bucaro's disqualification. Ordinarily, I would revoke the license.

It appears, however, that shortly after the charges herein were served, Michael Bucaro entered into negotiations to sell the licensed business. Upon the satisfactory conclusion of said negotiations the license was transferred, on February 25, 1946, to one John McDonald, subject to any penalty imposed in the then pending disciplinary proceedings. Mr. McDonald, in the opinion of the local issuing authority, apparently is fully qualified to hold the license. In view of this correction, I shall suspend the license for the balance of its term, which is equivalent to a period of ninety days (the minimum suspension in "front" cases involving a person disqualified by a criminal record). Re DeBolt, Bulletin 667, Item 3.

Although defendant's license was transferred during the pendency of these proceedings, the present penalty is effective against the transferee by virtue of State Regulations No. 16. Moreover, the local issuing authority apparently granted the transfer of the license on the express condition that it be subject to the outcome of these proceedings.

Accordingly, it is, on this 25th day of March, 1946,

ORDERED, that Plenary Retail Consumption License C-24, issued by the Mayor and Council of the Borough of Lodi to Amelia Bucaro, t/a Triangle Tavern, for premises 4 Main Street, Lodi, and transferred during the pendency of these proceedings to John McDonald, t/a May-Mac Bar & Grill, for the same premises, be and the same is hereby suspended for the balance of its term, commencing at 4:00 a.m. April 2, 1946, and terminating at midnight, June 30, 1946.

Erwin S. Hock
Deputy Commissioner.