

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

BULLETIN 598

DECEMBER 15, 1943

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

BULLETIN 598

DECEMBER 15, 1943.

1. REGULATIONS NO. 17 - RULES GOVERNING THE TRANSPORTATION OF ALCOHOLIC BEVERAGES INTO NEW JERSEY - RULE 2 AMENDED.

CONFISCATION PROCEEDINGS - ALCOHOLIC BEVERAGES TRANSPORTED IN VIOLATION OF THE RULES REQUIRING SPECIAL PERMIT, INSIGNIA OR WAYBILL SUBJECT TO FORFEITURE TOGETHER WITH VEHICLE TRANSPORTING THE SAME.

December 6, 1943

NOTICE

Rule 2 of State Regulations No. 17 provides that alcoholic beverages not intended for sale or use in New Jersey may be transported through this State in any vehicle, provided no delivery is made in New Jersey.

The above rule imposes no restrictions or controls whatsoever on alcoholic beverages being transported in interstate commerce through New Jersey. Within the past year a serious shortage in the supply of alcoholic beverages has developed both as a result of restrictions placed upon the manufacture of certain types thereof and a substantial increase in consumer demand for such products. The situation has resulted in widespread black market operations in liquor throughout the country and has encouraged the resumption of hijacking and bootlegging activities.

Although I have no desire to restrict the lawful transportation of alcoholic beverages in interstate commerce, I deem it necessary at this time to exercise certain additional controls over such transportation in cooperation with Federal authorities in our mutual efforts to enforce the laws pertaining to the manufacture, sale and distribution of alcoholic beverages, and as part of our present campaign against black market operations, hijacking and bootlegging.

Accordingly, State Regulations No. 17 are hereby amended to read as follows, effective immediately:

[For purposes of completeness, State Regulations No. 17, as amended, are set forth in full, although the only change made therein is in the provisions of Rule 2.]

"1. Alcoholic beverages owned by or sold to the holder of a New Jersey Manufacturer's or Wholesaler's license, may be brought into this State by a licensed transporter, or in the licensee's vehicle bearing proper transportation insignia.

"2. Alcoholic beverages, in an amount not exceeding 1/4 barrel (or one case containing not in excess of 12 quarts in all) of beer, ale or porter, and one gallon of wine, and one gallon of other alcoholic beverages, may be transported through this State, in any vehicle, provided no delivery is made in New Jersey. Alcoholic beverages in excess of the amount hereinabove set forth may be transported through this State in any vehicle, provided no delivery is made in this State and provided, further, that (a) it is so transported by a licensed transporter, or (b) such vehicle carries a waybill, or copy thereof, or similar document stating the names and

addresses of the consignor and consignee, the nature and quantity of alcoholic beverages being transported, the place at which they were received, and the place of their destination, or (c) such vehicle carries a special permit issued by the State Commissioner of Alcoholic Beverage Control.

"3. Alcoholic beverages may be brought into New Jersey by a licensed transporter where they are being delivered to a licensed public warehouse for temporary storage, and awaiting ultimate delivery without this State, or within this State to licensed manufacturers and wholesalers.

"4. Alcoholic beverages intended for personal consumption and not for sale may be brought into this State by any individuals on their persons or in vehicles under their control, or by any licensed transporter, to the following extent, viz.: Not exceeding 1/4 barrel (or one case containing not in excess of 12 quarts in all) of beer, ale or porter and one gallon of wine, and one gallon of other alcoholic beverages within any consecutive period of 24 hours; provided, however, that no licensed transporter may accept any shipment of alcoholic beverages in any amount, from, or at the licensed premises of any retailer of alcoholic beverages licensed in any other State and thereafter deliver or cause to be delivered such shipment to any consumer within this State.

"5. Alcoholic beverages may be brought or carried into New Jersey by a person having a special permit issued by the State Commissioner of Alcoholic Beverage Control in any vehicle to the extent and subject to the conditions of such special permit, without any transportation insignia.

"6. Retail transit licensees may continue to bring alcoholic beverages into this State in connection with their licenses, as heretofore."

Alcoholic beverages transported in violation of any of the above rules, and the vehicle containing the same, are unlawful property and are subject to seizure and forfeiture by the Commissioner.

ALFRED E. DRISCOLL
Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES FOR CONSUMPTION OFF THE LICENSED PREMISES IN OTHER THAN ORIGINAL CONTAINERS, IN VIOLATION OF R. S. 33:1-2 - REFILLING WINE BOTTLES, IN VIOLATION OF R. S. 33:1-78 - 10 DAYS' SUSPENSION, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

DONATO SODANO
T/a SODANO BAR & GRILL
247 Main Street
Cliffside Park, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-6, issued by the Borough Council of the Borough of Cliffside Park.

Giuliano & Giuliano, Esqs., by James R. Giuliano, Esq.,
Attorneys for Defendant-Licensee.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleaded non vult to charges alleging that (1) he sold wine for consumption off the licensed premises in other than original containers, in violation of R. S. 33:1-2; and (2) that he refilled bottles of wine for the purpose of sale, in violation of R. S. 33:1-78.

I shall accept the plea as fully equivalent to a plea of guilty for the purpose of the instant case.

An examination of the file discloses that, on at least three days in October, licensee was observed by A.B.C. investigators to be selling wine from other than original bottles, and that on at least two of these occasions wine so rebottled was sold to the investigators for off-premises consumption.

This is defendant-licensee's first adjudicated offense since about eight years ago, when he suffered a penalty for non-payment of a tax penalty. I will not, under the circumstances, consider this former suspension as one in aggravation of the present violations. In view, however, of the series of sales and licensee's statement as to his reason for refilling the bottles, I cannot consider the statement made with the plea as further mitigation and shall suspend defendant's license for a period of ten days and remit five days thereof for the plea, Re Porcoro, Bulletin 582, Item 9, leaving a net suspension of five days.

Accordingly, it is, on this 30th day of November, 1943,

ORDERED, that Plenary Retail Consumption License C-6, issued by the Borough Council of the Borough of Cliffside Park to Donato Sodano, t/a Sodano Bar & Grill, for premises 247 Main Street, Cliffside Park, be and the same is hereby suspended for a period of five (5) days, commencing at 3:00 A.M. December 6, 1943 and terminating at 3:00 A.M. December 11, 1943.

ALFRED E. DRISCOLL
Commissioner.

3. ACTIVITY REPORT FOR NOVEMBER, 1943

To: Alfred E. Driscoll, Commissioner

<u>ARRESTS:</u> Licensees and employees - - - - -	3	Bootleggers - - - - -	20
Total number of persons arrested- - - - -			23
<u>SEIZURES:</u> Stills - 1 to 50 gallons daily capacity- - - - -			0
50 gallons and more daily capacity- - - - -			2
Total number of stills seized - - - - -			2
Mash - gallons - - - - -			28,836
Motor vehicles - Trucks- - - - -			3
Passenger cars- - - - -			7
Total number of motor vehicles seized - - - - -			10
Beverage alcohol - gallons - - - - -			920
Brewed malt alcoholic beverages (beer, ale, etc.) - gallons- - - - -			11.91
Wine - gallons - - - - -			0
Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons- - - - -			1,125.85

RETAIL LICENSEES:

Total number of premises inspected - - - - -			1,404
Total number of bottles gauged - - - - -			9,711
Total number of premises where violations were found - - - - -			91
Total number of violations found - - - - -			93
Type of violations found:			
Illicit (bootleg) liquor - - - - -	3	Improper beer tap markers- - - - -	3
Gambling devices - - - - -	0	Stock disposal permits necessary - - - - -	4
Prohibited signs - - - - -	0	No sign denoting legal sale hours - - - - -	
Unqualified employees- - - - -	19	off-premises consumption - - - - -	51
"Fronts" (concealed ownership) - - - - -	5	Other types of violations - - - - -	8

MILITARY AREA PATROL INSPECTIONS:

425

STATE LICENSEES:

Premises inspected- - - - -			33
License applications investigated - - - - -			18

COMPLAINTS:

Investigated, reviewed and closed - - - - -			478
Investigation assigned, not yet completed - - - - -			367

LABORATORY:

Analyses made - - - - -			135
"Shake-up" cases (alcohol, water and artificial coloring) - - - - -			9
Liquor found to be not genuine as labeled - - - - -			6

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made - - - - -			34
Persons fingerprinted for non-criminal purposes - - - - -			196
Identification contacts with other enforcement agencies - - - - -			167
Motor vehicle identifications via N. J. State Police Teletype - - - - -			17

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities - - - - -			22
Cases instituted at Department- - - - -			22
Cancellation proceedings at Department- - - - -			1

HEARINGS HELD AT DEPARTMENT:

Total number of hearings held - - - - -			44
Appeals- - - - -	5	Eligibility - - - - -	9
Disciplinary proceedings - - - - -	26	Seizures- - - - -	4

PERMITS ISSUED:

Total number of permits issued- - - - -			1,021
Unqualified employees - - - - -			173
Solicitors- - - - -			42
Social affairs- - - - -			186
Home manufacture of wine- - - - -			458
Disposal of alcoholic beverages - - - - -			77
Miscellaneous permits - - - - -			85

Respectfully submitted,
Sydney B. White
Chief Inspector

4. APPELLATE DECISIONS - MARTIN v. HOBOKEN.

JOHN MARTIN,)

Appellant,)

-vs-)

ON APPEAL
CONCLUSIONS AND ORDER

BOARD OF COMMISSIONERS OF THE)
CITY OF HOBOKEN,)

Respondent.)
-----)

Joseph F. X. Malloy, Esq., Attorney for Appellant.
John J. Fallon, Esq., by Robert F. McAlevy, Esq.,
Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the revocation of his Plenary Retail Consumption License C-170 which had been issued to him for premises at 265-269 First Street, Hoboken. His application for a stay pending determination of the appeal was denied.

On October 26, 1943 respondent revoked appellant's license after it had found him guilty, in disciplinary proceedings, of the following charges:

"1. That you did on the 10th day of October, 1943, in the licensed premises conducted by you at 269 First Street, Hoboken, N. J., sell, serve, deliver, allow and permit the service and delivery of an alcoholic beverage to one Mauro DeCandia while the said Mauro DeCandia was actually or apparently intoxicated, and that you did allow, permit and suffer the consumption of alcoholic beverages by said Mauro DeCandia on the licensed premises while he was actually or apparently intoxicated, all of which was contrary to and in violation of Section 1 of Regulation 20 of the Department of Alcoholic Beverage Control.

"2. That you did on the 10th day of October, 1943, allow, permit and suffer the service or delivery of an alcoholic beverage to a person under 21 years of age, namely Rose Thomas, contrary to Section 1 of State Regulation 20 promulgated by the Commissioner of the Department of Alcoholic Beverage Control, which provides as follows:

"1. No licensee shall sell, serve, deliver or allow, permit or suffer the service or delivery of an alcoholic beverage, directly or indirectly, to any persons under the age of twenty-one (21) years or to any person actually or apparently intoxicated, or allow, permit or suffer the consumption of alcoholic beverages by any such person upon the licensed premises."

"3. That you did, on or about the 10th day of October, 1943, and divers other dates, allow, permit and suffer upon the above mentioned licensed premises, prostitutes and persons of ill repute, contrary to and in violation of Section 4 of Regulation 20 of the Department of Alcoholic Beverage Control.

"4. That you did, on or about the 10th day of October, 1943, and divers other dates, violate the resolution and regulation of the Board of Commissioners of the City of Hoboken passed December 17, 1935, in that you did allow, permit and suffer in and upon the licensed premises, women conversationalists and other persons of ill repute, and that you did permit the assembling of females in the licensed premises for the enticing of customers."

The evidence herein shows that on Sunday, October 10, 1943, Mauro DeCandia met Rose Thomas, a minor, upon appellant's premises and there arranged to have sexual intercourse with her in a vacant apartment some distance away. Later in the evening DeCandia complained to the Hoboken Police that Rose had stolen his money and, as a result of the complaint, Rose and one George Williams were placed under arrest.

At the hearing herein Mauro DeCandia testified that he was intoxicated when he entered appellant's premises at about 7:00 P.M. on the evening of October 10th, and that he thereafter purchased and drank beer on the licensed premises. Sergeant Kraemer of the Hoboken Police Department testified at the hearing herein that DeCandia was intoxicated when he made his complaint at about 11:20 P.M. on the same day. In a statement given to Lieutenant Reynolds of the Hoboken Police Department on October 12th, the licensee admitted that DeCandia was intoxicated when he first saw him at 4:00 P. M. on Sunday, October 10th. Appellant admitted at the hearing herein that he had served a glass of beer to DeCandia but alleges that the patron did not consume any of the beer. However, appellant's wife, who was also present when DeCandia was served, testified that DeCandia drank some of the beer but that "he never finished it." The evidence clearly shows that the appellant is guilty as to charge (1).

Rose Thomas was seventeen years of age on August 6, 1943. Her mother testified that on August 12, 1943 she saw her daughter drinking beer in the licensed premises and that she then told the licensee not to permit her daughter to visit his place of business. At the hearing herein, Rose Thomas testified that on October 10, 1943 the appellant served her seven drinks of Puerto Rican Rum, one of which was purchased by her and the other six purchased by DeCandia. She admits the arrangements made on the licensed premises for the immoral activities elsewhere, but states that the licensee had no knowledge of her plans. George Williams, another witness, testified that DeCandia purchased six or seven drinks for Rose on the day in question. Appellant and his wife admit that Rose was on the licensed premises on the evening of October 10th, but testified that Rose told them she was twenty-four years old, and that during the time she was on the premises Rose had only one glass of a non-intoxicating beverage. Frankly, I do not believe the testimony of appellant or his wife. The testimony of two other witnesses, that they did not see this girl drinking any intoxicating liquor, may be true, because they were in and out of the premises on the evening in question. Whether or not the girl told the licensee that she was of full age, the fact is that she is a minor. The evidence is sufficient to show the guilt of appellant as to charge (2).

It appears that George Williams introduced DeCandia to Rose Thomas and accompanied them when they left the licensed premises. Williams has been arrested on sixteen different occasions. Between July 1, 1934 and June 30, 1945 he was sentenced to jail on six different occasions for terms varying from thirty to ninety days, on charges of being drunk and disorderly, or being a disorderly person. In November 1937 he was sentenced to serve ten days in a county jail

for possession of illegal liquor. Lieutenant Reynolds testified that in July 1943 he told Mr. Martin to keep Williams out of the licensed premises. Appellant admits that Lieutenant Reynolds and Officer Dugan of the Hoboken Police put Williams out of his licensed premises three or four different times prior to October 10th. There is no doubt in my mind that, because of his lengthy record, Williams is a person of ill repute within the meaning of Rule 4 of State Regulations No. 20. Despite the warnings received, the licensee permitted this person to remain upon his premises on the evening of October 10, 1943. The evidence is sufficient to show the guilt of the appellant as to charge (3).

It is unnecessary to consider the question as to whether or not appellant is guilty as to the charge of permitting women conversationalists upon his licensed premises. The violations set forth in the first three charges, all of which are fully supported by the testimony, are sufficient to show that appellant is not a fit person to hold a liquor license. Under the circumstances, the penalty of revocation was clearly warranted. R. S. 33:1-31.

Accordingly, it is, on this 7th day of December, 1943,

ORDERED, that the action of respondent in revoking the license held by appellant be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

5. MORAL TURPITUDE - CRIME OF GRAND LARCENY FOUND TO INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS LAST PAST AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION TO LIFT GRANTED.

In the Matter of an Application)
to Remove Disqualification Be-)
cause of a Conviction, Pursuant)
to R. S. 33:1-31.2.)

CONCLUSIONS
AND ORDER

Case No. 308.
-----)

BY THE COMMISSIONER:

Petitioner is before me to remove his disqualification by reason of a conviction of a crime involving moral turpitude, pursuant to R. S. 33:1-31.2.

It appears from the fingerprint record of the Federal Bureau of Identification that, in 1924, while a resident of the State of Missouri, petitioner was convicted of a charge of grand larceny. As a result of this conviction he was sentenced to the State Penitentiary for three years and released after serving twenty-one months of the sentence. Shortly after his discharge in July 1926 he was again arrested for selling bootleg liquor and sentenced to two years in the State Penitentiary. He served fifteen months of that sentence and was finally released on February 18, 1928.

The crime of grand larceny involves moral turpitude. Re Case No. 202, Bulletin 504, Item 1. A conviction of selling illicit liquor during Prohibition, especially when it is an isolated instance as in this case, may not involve such an element. See Re Case No. 351, Bulletin 433, Item 2.

Shortly after petitioner's release from the Missouri State Penitentiary in 1928 he moved to New Jersey to live with an older sister, and since that time there appears to be nothing against his record. He has lived with his wife at his present address for eight years and now is employed by the municipality wherein he lives.

Petitioner produced three witnesses. One of these witnesses, a business man who conducts his business and lives within two or three doors of petitioner's residence, has known petitioner and his family and his associates for the past six or seven years. He says petitioner's reputation is "okay" with all the people in the neighborhood. Another witness, an attorney at law of this State, who is employed as tax attorney by the municipality in which petitioner lives, has employed petitioner in his home over the course of the last few years, has known him nine or ten years, and knows many people for whom petitioner has worked during that time, testifies that petitioner is trustworthy and bears an excellent reputation. The third witness, who is engaged in the oil business, has known petitioner since 1929. He knows his family and associates with him socially and says that petitioner's reputation among the people with whom he associates socially is very good.

In view of the testimony produced herein, I find that petitioner has conducted himself in a law-abiding manner for the five years immediately past and that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 7th day of December, 1943,

ORDERED, that petitioner's statutory disqualification resulting from the convictions described herein be and the same is hereby removed, in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL
Commissioner.

6. REFERENDUM - AUTHORIZING SUNDAY SALES PURSUANT TO R.S. 33:1-47 - PRIOR MUNICIPAL REGULATIONS REMAIN IN OPERATION AND EFFECT WHEN NOT INCONSISTENT WITH THE REFERENDUM'S RESULT - PREVIOUS RULING TO THE CONTRARY HEREBY SUPERSEDED.

December 7, 1943

Earl C. Nelson, Town Clerk,
Dover, New Jersey.

Dear Mr. Nelson:

I have your letter of November 16th (replying to ours of the 15th), stating that the question, pursuant to R. S. 33:1-47, voted upon in Dover at the general election held November 2, 1943, was:

"Shall the sale of Alcoholic Beverages be permitted on Sundays in this Municipality?"

You state, further, that the votes cast on the question were:

Yes - 1650; No - 1232.

Prior to the referendum, Sunday sales were prohibited in the Town of Dover between the hours of 1:00 A.M. and 2:00 P.M., except on Christmas and New Year's Day when they fall on Sunday, when the prohibited hours were from 3:00 A.M. to 2:00 P.M. (Christmas) and from 5:00 A.M. to 2:00 P.M. (New Year's Day). (Ordinance adopted January 8, 1940.)

In a referendum held under R. S. 33:1-47 (or under R.S.33:1-44, 33:1-45 or 33:1-46), the proposition voted upon contains no mention of hours of sale. The voter marks his ballot opposite "yes" or "no" on the plain question as to whether sales shall be permitted, not on the question as to whether sales shall be permitted during designated hours. The cited sections of the Alcoholic Beverage Law appear plainly to contemplate that in the event of an affirmative majority vote the local regulations concerning hours of sale, in force prior to the referendum and not inconsistent with its result, shall remain in operation and effect.

Thus, the Sunday hours provisions of the indicated Dover ordinance, being consistent with the results of the recently held referendum, are still in effect in the Town of Dover. If the majority of "yes" votes is taken as indicating that a majority of the voters desire an increase in the number of hours during which Sunday sales are now permitted, the Board of Aldermen may, in reasonable keeping with that desire, extend such Sunday hours of sale by an appropriate ordinance amendment.

It has heretofore been ruled that an affirmative majority vote on a referendum held pursuant to R. S. 33:1-47 removes all prior restrictions against Sunday sales -- that such affirmative vote supersedes all of the municipality's regulations dealing with hours of Sunday sales. (See Re Alpaugh, Bulletin 214, Item 1.) That ruling, and any other ruling by the Commissioner inconsistent with the ruling herein, is superseded.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

7. APPELLATE DECISIONS - HOFFMAN ET ALS. v. ORANGE ET AL.

FREDERICK W. HOFFMAN,
AQUILA N. VENINO, ET ALS.,)
Appellants,)
-vs-)
MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF ORANGE and LILLIAN DeLASCIA,)
Respondents)
-----)

ON APPEAL
CONCLUSIONS AND ORDER

Aquila N. Venino, Esq., Attorney for Appellants.
Edmond J. Dwyer, Esq., Attorney for Respondent, Municipal Board.
James R. Giuliano, Esq., Attorney for Respondent-Licensee.

BY THE COMMISSIONER:

This appeal is from the action of the Municipal Board of Alcoholic Beverage Control of the City of Orange renewing the plenary retail consumption license of Lillian DeLascia for premises at 568 McChesney Street, Orange. The appellants' petition urges, in essence, that the Board's action was erroneous in that it was the Board's duty, after finding that the licensee permitted such noises in the tavern as to constitute a nuisance to the neighborhood's residents, to abate the nuisance; and that, under the demonstrated circumstances, an effectual and continued abatement could not be accomplished short of "complete revocation and permanent revocation of the license."

By resolution dated July 15, 1943, the Municipal Board ordered renewal of the DeLascia license as of July 19, 1943, under the following conditions:

"that the license be immediately revoked for a period of thirty days to give the owner a 'cooling off', in which time he may realign himself, so that in the future the condition complained of will not exist, that the thirty days suspension is also in the nature of a punishment for past bad conduct, and also to give the licensee an opportunity to correct the fire, sanitary and plumbing violations heretofore complained of. The said suspension shall continue for at least the above specified time of thirty days, or until such time thereafter that the Board shall receive certificates from the said municipal departments. The license is renewed on the further condition that no juke box or other musical contraption be played upon the premises."

At this point, I must discuss two matters which, though not concerned directly with my disposition of the appeal herein, call for comment:

1. The word "revoked" in the above quoted portion of the Board's July 15th resolution was obviously used through inadvertence and with no thought to imposing a revocation which, under our statute (R.S. 33:1-31), renders the licensee "ineligible to hold or receive any other (alcoholic beverage) license, of any kind or class....for a period of two years from the effective date thereof...." The resolution's further language, including its use of the word "suspend", makes amply clear the object to suspend and not to revoke the license. I shall, therefore, construe the word "revoked", as used in the resolution, to mean "suspended."

2. If a licensee is convicted of violation of the Alcoholic Beverage Law, the license suspends automatically and without notice for the balance of its term. (R.S.33:1-31.1.) If an emergent situation should arise in which the remaining open of licensed premises would immediately threaten the public health and safety, the closing of such premises by instant action of duly constituted police authorities would appear to be unquestionably proper. (See Re Crain, Bulletin 105, Item 3.) Except as to the above cited automatic suspension and the emergency closing of premises by police action, the following provisions of the Alcoholic Beverage Law are applicable to suspension and revocation:

"No suspension or revocation of any license shall be made until a five day notice of charges preferred against the licensee shall have been given to him personally or by mailing the same by registered mail addressed to him at the licensed premises and a reasonable opportunity to be heard thereon afforded to him." R. S. 33:1-31.

The Municipal Board's action suspending the DeLascia license was not in keeping with the procedure set forth in the statute; in fact, no charges were preferred nor were the proceedings incident to the suspension disciplinary in character within the law's contemplation. The imposed suspension, however, has already been carried out. Furthermore, no appeal from that suspension has been filed with me,

and the thirty day period set forth in R. S. 33:1-31, within which such an appeal may be taken, has expired. Thus, the right of appeal may be considered to have been waived. Should a similar situation arise in the future, it is to be hoped that the Board will take timely disciplinary action in strict keeping with the protective procedures prescribed in the statute.

The testimony and official records in this case show that Lillian DeLascia has been operating a tavern at the McChesney Street address for approximately five years, during which time no formal charges were brought against her. She was, however, summoned before the Municipal Board some time in 1941 or 1942 because of a written complaint as to excessive noises occurring upon the licensed premises. On that occasion the Board requested the licensee "to cut down on the noise and juke box."

After Mrs. DeLascia had filed application for a 1943-1944 license, a letter objecting to the license issuance was received by the Board. The letter was supplemented by a petition containing the signatures of sixty-eight persons resident, or owning property, in the neighborhood of the licensed premises. The Board received also a petition bearing the signatures of one hundred persons and reciting that the signatories "do not hear any noise from Lillian DeLascia Tavern." It appears that many signers of this petition resided in the neighborhood of the licensed premises but that other signers resided at a considerable distance therefrom.

A public hearing on the objections was held by the Board on the evenings of July 6th and 7th, 1943. At the hearing eight persons spoke in objection and seven persons (in addition to several of the city's police officers) spoke in the applicant's behalf. The Board, concluding that the objections were not without merit -- that the premises had been so operated in the past as to constitute a nuisance -- granted renewal of the license subject to the thirty day suspension and to the special conditions hereinabove set forth.

The evidence adduced at the hearing on appeal was so voluminous as to preclude its detailed recounting in these conclusions. My careful review of that evidence discloses the appellants' failure to prove any violations by the licensee other than those relating to a noise nuisance. The testimony of persons resident in the neighborhood of the DeLascia tavern indicates clearly that the licensee may, on numerous occasions in the past, have permitted unnecessary noises upon the licensed premises; and that the behavior of patrons upon leaving the premises was frequently noisy and otherwise objectionable. It is most significant, however, that the testimony of appellants' witnesses shows the situation to have changed greatly for the better -- that since the tavern's reopening, following the thirty days' suspension, the nuisances complained of have been substantially ameliorated or no longer exist.

Under all the circumstances, I am satisfied that, upon the facts presented on the issues here before me, the action of the Municipal Board in renewing the license of respondent, Lillian DeLascia, subject to the conditions imposed, was not an improper or abusive exercise of its discretion. The Board's action is therefore affirmed.

Accordingly, it is, on this 7th day of December, 1943,

ORDERED, that the Petition of Appeal filed herein be and the same is hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

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

In the Matter of Disciplinary Proceedings against)

PAUL PAZICKY)
T/a PAUL'S BAR & GRILL)
19 W. River Road)
Rumson, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-5, issued by the Mayor and Council of the Borough of Rumson.)
-----)

Paul Pazicky, Defendant-Licensee, Pro Se.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads guilty to the charge which alleges, in substance, that, on July 29, 1943, he sold alcoholic beverages to a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The Departmental investigation in this case discloses that one Lewis ----, a youth eighteen years of age, purchased, on the evening in question, several glasses of alcoholic beverages for immediate consumption and also a bottle of liquor to take off the licensed premises.

The usual penalty for violation of this character where no aggravating circumstances are present and where the licensee has no previous adjudicated record is ten days. See Re Abrams, Bulletin 562, Item 8. In the present case, however, the Department records indicate that the within defendant pleaded guilty to a sale of alcoholic beverages during prohibited hours, as a result of which his license was suspended by the local issuing authority for five days, effective June 3, 1939.

Under the circumstances, I shall suspend the license for a period of fifteen days, with a remission of five days for the guilty plea, or a net suspension of ten days.

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

ORDERED, that Plenary Retail Consumption License C-5, issued by the Mayor and Council of the Borough of Rumson to Paul Pazicky, t/a Paul's Bar & Grill, for premises 19 West River Road, Rumson, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A.M. December 13, 1943 and terminating at 2:00 A.M. December 23, 1943.

ALFRED E. DRISCOLL
Commissioner.

9. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - NON-LICENSEE EXERCISING THE RIGHTS AND PRIVILEGES OF THE LICENSE PRIOR TO TRANSFER - ILLEGAL SITUATION CORRECTED - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against
 EDWARD W. DICKERSON and
 EDNA M. GRIGGS
 T/a CANTEEN CAFE
 609 Atlantic Avenue
 Atlantic City, N. J.,
 Holder of Plenary Retail Consumption License C-207, issued by the Board of Commissioners of the City of Atlantic City.

CONCLUSIONS
 AND ORDER

Oscar Lewine, Esq., Attorney for Defendant, Edward W. Dickerson.
 Elwood C. Weeks, Esq., Attorney for Defendant, Edna M. Griggs.
 Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendants, Edward W. Dickerson and Edna M. Griggs, pleaded guilty and non vult, respectively, to charges alleging that, from April 29, 1943 to June 17, 1943, (1) the license application submitted only in the name of Edward W. Dickerson failed to reveal that Edna M. Griggs was interested in the license and business conducted thereunder; (2) Edward W. Dickerson permitted Edna M. Griggs to exercise the rights and privileges of the license; and (3) Edna M. Griggs did exercise the rights and privileges of the license.

On April 29, 1943, when the license in question was issued only in the name of Edward W. Dickerson, the defendant, Edna M. Griggs, had been a resident of this State for less than one year. Since she was under the mistaken impression that the Alcoholic Beverage Law required a licensee to be a five-year resident, she caused the license to be issued only in the name of Edward W. Dickerson. In point of fact, the law requiring five years' residence was amended on March 27, 1943 by substituting in its place a provision for a bona fide residence in this state of no specified duration. See P. L. 1943, c. 46.

On June 17, 1943, upon being apprised of this amendment, the license was transferred into the names of both parties.

Since there is no previous record and the license now stands properly issued in the names of both defendants, I shall suspend the license for the usual period of ten days. Cf. Re Starr, Bulletin 590, Item 2.

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

ORDERED, that Plenary Retail Consumption License C-207, issued by the Board of Commissioners of the City of Atlantic City to Edward W. Dickerson and Edna M. Griggs, t/a Canteen Cafe, for premises 609 Atlantic Avenue, Atlantic City, be and the same is hereby suspended for a period of ten days, commencing at 12:01 A.M. December 13, 1943 and terminating at 12:01 A.M. December 23, 1943.

ALFRED E. DRISCOLL
 Commissioner.

10. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN PROOF - 15 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)
)
 CLUB RHUMBA, INC.)
 T/a RHUMBA BAR AND GRILL)
 109 Beachway)
 Keansburg, N. J.,)
 Holder of Plenary Retail Consumption License C-15, issued by the Mayor and Council of the Borough of Keansburg.)
 -----)

CONCLUSIONS AND ORDER

Haydn Proctor, Esq., Attorney for Licensee.
 Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that it possessed a 4/5th quart bottle of "Imperial Hiram Walker's Blended Whiskey 86 Proof" and a 4/5th quart bottle of "Teacher's Highland Cream Perfection of Blended Scotch Whiskey 86 Proof", which bottles contained alcoholic beverages not genuine as labeled.

On August 23, 1943 two ABC agents, while making a routine inspection at the defendant's premises, seized the two bottles in question. Upon chemical analysis, they were found to be substantially lower in proof than genuine samples of the same products.

The president of the corporate defendant, although disclaiming any knowledge of how the violation actually occurred, proffered the explanation that an employee may have tampered with the contents of the bottles. Despite the defendant's personal innocence, however, it must nevertheless be held strictly accountable for the condition of its liquor stock. Re Kurian, Bulletin 517, Item 2.

The defendant has heretofore suffered a suspension of its license. On April 1, 1943 the local issuing authority imposed a penalty against it of fifteen days for sales to minors. Under the circumstances, the minimum penalty that may here be imposed is a suspension for a period of fifteen days. Cf. Re Sawon, Bulletin 532, Item 14; re Stanulis, Bulletin 579, Item 4.

These premises, which are located in a seashore community, are now closed and will not reopen for business until the Spring of next year. The effective date of the suspension herein, therefore, will be postponed until April 3, 1944.

It is, therefore, on this 9th day of December, 1943,

ORDERED, that Plenary Retail Consumption License C-15, heretofore issued to Club Rhumba, Inc., t/a Rhuaba Bar and Grill, for premises located at 109 Beachway, Keansburg, by the Mayor and Council of the Borough of Keansburg, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 A.M. April 3, 1944, and expiring at 2:00 A.M. April 18, 1944.

ALFRED E. DRISCOLL
 Commissioner.

11. MORAL TURPITUDE - CRIME OF ARSON INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS LAST PAST AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION TO LIFT GRANTED.

In the Matter of an Application)
to Remove Disqualification Be-)
cause of a Conviction, Pursuant)
to R. S. 33:1-31.2.)

CONCLUSIONS
AND ORDER

Case No. 305.
-----)

BY THE COMMISSIONER:

Petitioner is before me to remove his disqualification by reason of a conviction of a crime involving moral turpitude, pursuant to R. S. 33:1-31.2.

It appears from the fingerprint record of the New Jersey State Bureau of Identification that applicant was arrested in 1934 on a charge of arson and eventually pleaded non vult to said charge on June 14, 1938, at which time he was fined \$2,000.00 and placed on probation for a year. The crime of arson involves moral turpitude. Re Case No. 186, Bulletin 485, Item 9.

Petitioner seeks to explain this situation by sworn evidence that he knew nothing about the building or the fire. He claims that he did not even know where the property was located, that he had no interest in any fire insurance on the property, nor did he collect any insurance. While we cannot go back of the record and examine the guilt or innocence of the applicant, we can consider that he was not tried until four years after the arrest and that during that time he was free on bail.

Petitioner further claims that he was injured in his employment in september 1935 and that he was supported by Workmen's Compensation payments from that time until 1942, at which time he made a final settlement, receiving a considerable lump sum, which money he desires to invest in a business because he is still unable to go back to his prior employment due to the serious nature of his injuries, which have left him considerably incapacitated for hard labor. Most of the seven years between 1935 and 1942 were spent in and out of hospitals seeking a cure for his injuries.

Petitioner claims that he has never been arrested or convicted of any other crime except the one mentioned herein. His fingerprint record discloses no other arrest or conviction.

Petitioner produced several witnesses, one a storekeeper, who has known him ever since he came to this country in 1922. He knew of his trouble with the law but claims that the petitioner now bears a good reputation. Another witness who has known him about fifteen years, socially, says his reputation amongst the people with whom he associates is very good.

Because of petitioner's illness, he claims that it is hard for him to bring witnesses who have known him well during the past five years and he offers, in addition to those two persons, two of his cousins who live in his home town and who associate with him and with his friends. Both of them have known him for about twenty years. They move in the same social circle with him and claim that his reputation amongst his associates is very good and that "he is very fine and respectable as a member of the family."

In view of the testimony produced herein, I find that petitioner has conducted himself in a law-abiding manner for the five years immediately past and that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 13th day of December, 1943,

ORDERED, that petitioner's statutory disqualification resulting from the conviction described herein be and the same is hereby removed, in accordance with the provisions of R. S. 33:1-31.2.

Alfred E. Griswold
Commissioner.