

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

BULLETIN 572

June 15, 1943.

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

BULLETIN 572

JUNE 15, 1943.

1. DISCIPLINARY PROCEEDINGS - HOLDER OF SOLICITOR'S PERMIT EMPLOYED BY NEW JERSEY PLENARY WINERY AND PLENARY WHOLESALE LICENSEES ENGAGED IN THE RETAILING OF ALCOHOLIC BEVERAGES, IN VIOLATION OF R. S. 33:1-43 - SOLICITOR'S PERMIT SUSPENDED FOR BALANCE OF TERM.

In the Matter of Disciplinary Proceedings against)

EDWARD DEL MASTRO,
75 Crosby Avenue,
Paterson, N. J.,)

CONCLUSIONS
AND
ORDER

Holder of Solicitor's Permit No. 1733, issued by the State Commissioner of Alcoholic Beverage Control.)
-----)

Edward Del Mastro, Pro Se.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads guilty to the following charge:

"On April 22, 1943, and on May 3, 1943, and on divers other dates, while you were interested in the manufacturing and the wholesaling of alcoholic beverages by reason of your employment as a solicitor for Albert Vischia, t/a Sonoma Vineyards Winery, Reinco, California Vintners Products and Cameo Wine Sales Co., holder of New Jersey plenary winery and plenary wholesale licenses, you were at the same time also interested in the retailing of alcoholic beverages at the retail licensed premises of Frank Paul Del Mastro at 466 Union Avenue, Paterson, New Jersey, by reason of your employment on said retail licensed premises, in violation of R. S. 33:1-43."

The file discloses that during the defendant's employment as a solicitor for a holder of New Jersey plenary winery and plenary wholesale licenses, he sold liquor on several occasions at the retail licensed premises owned and operated by his son.

Defendant has indicated in writing his intention to discontinue his employment as a solicitor and in furtherance thereof has surrendered his permit to this Department. I will, therefore, suspend said solicitor's permit for the balance of the term. See Re Biard, Bulletin 516, Item 7.

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

ORDERED that Solicitor's Permit No. 1733, heretofore issued to Edward Del Mastro by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for the balance of its term, effective immediately.

ALFRED E. DRISCOLL,
Commissioner.

2. APPEAL DISMISSED - GORSKI v. HARRISON.

RICHARD GORSKI,)
)
 Appellant,)
)
 -vs-) On Appeal
)
 TOWN COUNCIL OF THE TOWN OF) ORDER
 HARRISON,)
)
 Respondent.)
)
 - - - - -)

Feld & Breitner, Esq., by Joseph J. Breitner, Esq.,
 Attorneys for Appellant.
 Michael J. Bruder, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from respondent's refusal to transfer to appellant the plenary retail consumption license of William B. McManus for premises 206 Harrison Avenue, Harrison.

Since filing the petition of appeal, the appellant has lost his right to possession of the premises in question. Under the circumstances, no license may be issued to him for said premises. D'Annibale v. Fredon, Bulletin 139, Item 7; Agzigian v. Pequannock, Bulletin 216, Item 1. Also cf. Rittenger v. Bordentown, Bulletin 547, Item 10.

In view of the foregoing, the attorneys for both parties have consented that this appeal be discontinued.

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

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

ALFRED E. DRISCOLL,
 Commissioner.

3. SALES TO MINORS - HEREIN OF THE LAW AND REGULATIONS APPLICABLE TO LICENSEES AND THEIR AGENTS, AND OF THE RESPONSIBILITY AND LIABILITY THEREUNDER - WHEN DOUBTFUL THAT CUSTOMER IS OF AGE, DO NOT SELL.

CIVIL RIGHTS ACT - RELATES TO DISCRIMINATION BASED UPON RACE, CREED OR COLOR - DOES NOT APPLY WHEN LICENSEE OR AGENT REFUSES TO SELL TO PERSON WHO APPEARS TO BE UNDER TWENTY-ONE YEARS OF AGE.

June 8, 1943

Mr. Henry C. Lapidus, Editor
 The Leader
 Wildwood, New Jersey

Dear Mr. Lapidus:

I have your letter of June 5th stating in part that Wildwood has introduced an ordinance relating to sales of alcoholic beverages to minors, and raising the important and timely question:

"Suppose a bartender refuses to serve a person whom he believes is a minor but in fact is 21 or over but apparently looks under 21; can there be any come-back as far as the bartender is concerned and can the Civil Liberties Act be invoked?"

The answer to your question is NO! There can be no come-back. The Civil Rights Act does not mention age.

According to our records, the Wildwood ordinance scheduled for final adoption on June 8th is directed not at alcoholic beverage licensees but at the minors themselves. The ordinance would make it unlawful for a minor to purchase or attempt to purchase alcoholic beverages on licensed premises or to enter such premises for the purpose of purchasing or being served alcoholic beverages. Further, it would be unlawful for a minor to misrepresent his age for the purpose of inducing the sale of alcoholic beverages. (Such misrepresentation of age is also punishable, upon conviction thereof, by a fine not exceeding two hundred dollars under the "disorderly persons" supplement - P. L. 1937, c. 135; R. S. 33:1-81.) The proposed ordinance contains a penalties section providing for a fine of not more than two hundred dollars or imprisonment for not more than ninety days, or both in the discretion of the court. So much for the responsibility and liability of the minor who purchases or attempts to purchase alcoholic beverages. Now let us consider the responsibility and liability of the licensee.

The sale of any alcoholic beverage to a minor is a misdemeanor. The law provides, however, that the establishment of all of the following facts by a person making such a sale shall constitute a defense to any prosecution therefor:

- "(a) that the minor falsely represented in writing that he or she was twenty-one (21) years of age or over;
- "(b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one (21) years of age or over; and
- "(c) that the sale was made in good faith relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one (21) years of age or over;" (R.S. 33:1-77.)

Rule 1 of State Regulations No. 20 reads, in part:

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

A license may be suspended or revoked for any violation of State rules and regulations. Furthermore, a license may be suspended or revoked for any violation of a municipal ordinance, resolution or regulation. (R. S. 33:1-31, paragraphs g and h.)

These citations make it clear that the law and regulations are very strict on sales to minors. They make it clear, also, that the only safe course when there is any reasonable doubt of a customer's age is to refuse to sell to him.

The Civil Rights Act forbids discrimination in accommodations and privileges when based on race, creed or color, or previous condition of servitude. That is as far as the Act goes - it does not apply when a licensee or his agent refuses to sell alcoholic beverages to a person whom he believes to be under twenty-one years of age and who appears to be under that age. A refusal to sell under such circumstances is not only the safe course but the definitely proper and right thing to do. Sales to minors is still one of our most serious problems.

Very truly yours,

ALFRED E. DRISCOLL,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - 20 DAYS' SUSPENSION.

In the Matter of Disciplinary)
Proceedings against)
JOHN J. POWERS)
t/a The Timbers)
Madison Avenue)
Morris Township)
P.O. #1 Ponce Road)
Convent, New Jersey)
Holder of Plenary Retail Con-)
sumption License C-5, issued by)
the Township Committee of the)
Township of Morris.)
-----)

CONCLUSIONS
AND
ORDER

Edgar H. Rossbach, Esq., Attorney for Defendant-Licensee.
William F. Wood, Esq., Attorney for State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleads not guilty to charges which, in short, allege that he sold and served alcoholic beverages to minors at his tavern in violation of the statute and State Regulations. See R. S. 33:1-77; Rule 1 of State Regulations No. 20.

The testimony discloses that on numerous occasions between May 1941 and April 1942 a waitress at the defendant's premises served beer and whiskey to three minor girls. Two of the minors were then sixteen years old and the other was eighteen years old. The latter testified that she had visited the tavern on at least ten occasions, while the other two were there at least two or three times.

The defendant does not deny that these minors frequented his premises. In a written statement obtained from the waitress, she admits that they visited the tavern for four or five months prior to April 1942. She denies, however, that any of the minor girls were served alcoholic beverages. She states that, although beer was served to the male companions of the minors, the girls ordered and were served coca-cola.

The defendant contends that, if the girls did consume any of the beer served to their companions, the "only reasonable deduction to be drawn is that ... these people arranged to have the alcoholic drinks served to the members of their party who were of age, and then operated a 'switch' ..." Even if this did take place, the licensee would still be guilty of a violation of Rule 1 of State Regulations No. 20 which provides, among other things, that no licensee shall permit the consumption of alcoholic beverages by a minor upon his licensed premises.

The defendant also points out some discrepancies in the testimony given by the minors at the hearing in this case on November 20, 1942 and that given by them at the defendant's criminal trial on June 18, 1942. While some variances are discernible in their testimony, they all relate to minor details, such as the exact dates of their visits to the tavern and the particular persons who accompanied them on each of those visits. I am satisfied, however, after a careful study of the entire record, that these minors were served alcoholic beverages at the defendant's licensed premises on several occasions. Although there may be some doubt as to the specific dates of those occasions, there is no question in my mind that the related facts actually occurred. No reason is made apparent why these minors should fabricate their stories out of thin air. In fact, this violation came to light only because one of the minor girls was arrested on a morals charge and, upon being questioned by the local police, disclosed her visits to the defendant's tavern and the names of the other persons who were there with her.

This is one of a series of cases involving sales of alcoholic beverages to these and other minors by various licensees in Morris County. One of these cases, in which the same three minor girls were concerned, resulted in my imposing a twenty-day penalty against the licensee. Re Yurick, Bulletin 538, Item 6. The same suspension will be given in this case.

Accordingly, it is, on this 9th day of June, 1943,

ORDERED that Plenary Retail Consumption License C-5, heretofore issued by the Township Committee of the Township of Morris to John J. Powers, t/a The Timbers, for premises Madison Avenue, Morris Township, be and the same is hereby suspended for the balance of its present term, effective at 1:00 A.M. June 14, 1943; and it is further

ORDERED that if any license be issued to this licensee, or to any other person, for the premises in question for the fiscal year 1943-44, such license shall remain under suspension until 1:00 A.M. July 4, 1943.

ALFRED E. DRISCOLL,
Commissioner.

- 5. DISCIPLINARY PROCEEDINGS - SUSPENSION FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT AFTER EXPIRATION OF 25 DAYS AND CORRECTION OF UNLAWFUL SITUATION - UNLAWFUL SITUATION CORRECTED AND TRANSFER APPROVED BY ISSUING AUTHORITY - APPLICATION TO LIFT GRANTED UPON EXPIRATION OF 25 DAYS.

In the Matter of Disciplinary Proceedings against)
)
 EVELYN FISCHER)
 t/a VICTORY TAVERN) ON PETITION
 6201 Hudson Avenue)
 West New York, N. J.) ORDER

Holder of Plenary Retail Consumption License C-85, issued by the Board of Commissioners of the Town of West New York.)
)
 -----)

Urban C. Powers, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

On May 21, I suspended the license of defendant, Evelyn Fischer, for the balance of its term, effective May 25, 1943, on a plea of guilty to charges alleging that she had been a "front" for Michael Russo and his wife Helen Russo, or for either or both of them. Re Fischer, Bulletin 569, Item 8.

In said order it was provided that leave would be given to petition to lift the suspension after twenty-five days thereof had been served, upon correction of the illegal situation. Pursuant to said leave, the parties interested herein have filed a verified petition wherein it is set forth that Helen Russo is the only person now interested in said license. The license was transferred to her by the Board of Commissioners of the Town of West New York on June 2, 1943, subject to the suspension, as the records of the Department disclose.

It appearing that the unlawful situation has been corrected and it further appearing that the twenty-five day minimum suspension will expire on June 19, 1943 at 3:00 A. M., the suspension will be lifted, effective at that time.

Accordingly, it is, on this 9th day of June, 1943,

ORDERED that the suspension heretofore imposed be lifted and that Plenary Retail Consumption License C-85, heretofore issued by the Board of Commissioners of the Town of West New York, be and the same is hereby restored to full force and operation, effective June 19, 1943, at 3:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

6. COURT DECISIONS - NEW JERSEY SUPREME COURT - LEHN AND KRUMP, PROSECUTORS, v. CALDWELL TOWNSHIP AND COMMISSIONER OF ALCOHOLIC BEVERAGE CONTROL, RESPONDENTS - APPLICATION FOR WRIT OF CERTIORARI DENIED.

NEW JERSEY SUPREME COURT

ELFRIEDE LOUISE LEHN and :
ANTON KRUMP, :

Prosecutors, :

-vs-

ON APPLICATION FOR WRIT

OF CERTIORARI

TOWNSHIP COMMITTEE OF THE :
TOWNSHIP OF CALDWELL, THOMAS :
J. DUFFEE, TOWNSHIP CLERK OF :
THE TOWNSHIP OF CALDWELL, and :
ALFRED E. DRISCOLL, COMMISSION- :
ER OF ALCOHOLIC BEVERAGE CON- :
TROL, :

RULE

Respondents. :

This matter having come on for hearing before the Honorable Charles W. Parker, Justice of the New Jersey Supreme Court at his chambers at the Courthouse, Newark, New Jersey, on the 22nd day of May, 1943 on notice and application duly served, and the matter having been heard and argued in the presence of Grossman and Kampelman, Esqs., attorneys for the prosecutors, and Robert W. Brady, Esq., attorney for the Township Committee of the Township of Caldwell, and Thomas J. Duffee, Township Clerk of the Township of Caldwell, and Samuel B. Helfand, attorney for Alfred E. Driscoll, Commissioner of Alcoholic Beverage Control, and it appearing to the Court that good cause has not been shown for granting of the writ applied for, it is, therefore, on this first day of June, 1943,

ORDERED that the application of Elfriede Louise Lehn and Anton Krump, prosecutors, be and the same is hereby denied without costs.

Charles W. Parker
Justice

Consent to the form of the foregoing order is hereby given.

Grossman and Kampelman

7. MORAL TURPITUDE - CRIME OF ROBBERY FOUND TO INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - 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. 277)
)
-----)

BY THE COMMISSIONER:

Petitioner in this proceeding prays that his disqualification resulting from the conviction of a crime be lifted pursuant to R. S. 33:1-31.2.

On March 25, 1931, petitioner pleaded non vult in a Court of Quarter Sessions to the crime of robbery and was sentenced to four years in the State Penitentiary in Trenton. Of this term he served twenty-six months and was thereupon paroled. Petitioner alleges that he was innocent of the crime to which he pleaded non vult. However, the question of his guilt or innocence cannot be redetermined herein. The crime clearly involved moral turpitude. In 1939 petitioner applied to the Court of Pardons in New Jersey and was granted the restoration of his citizenship on December 14, 1939.

At the hearing three character witnesses, an attorney and government employee and two businessmen, appeared and testified. All have known petitioner for a period of over twenty years. All stated that they have been closely associated with petitioner since boyhood and more specifically for the five years last past. Each witness expressed the opinion that petitioner is honest, respectable and law-abiding. They stated that he is highly regarded in the community in which he resides and is looked up to and respected by all who know him. Petitioner has been gainfully employed since his release from prison and until very recently was employed in the Shipyards in defense work. He is not so employed at the present time because of an injury sustained in an automobile accident but intends to take up his work as soon as his doctor will sanction his return. Petitioner stated that he had never been in any trouble of any nature before the date of the crime nor has he been in any trouble since.

According to the reports of the Chief of Police of the city in which petitioner resides, there have been no complaints concerning petitioner's conduct since the offense committed nor does the record show any pending investigations.

I, therefore, conclude that petitioner has been law-abiding for at least ten years last past and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 9th day of June, 1943,

ORDERED that petitioner's disqualification be lifted in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL,
Commissioner.

8. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN LICENSE APPLICATION
CONCEALING MATERIAL FACT - CORPORATION DISQUALIFIED - NON-RESIDENT
STOCKHOLDER HELD BENEFICIAL INTEREST IN MORE THAN 10% OF CORPORATE
STOCK - ILLEGAL SITUATION CORRECTED - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary)
Proceedings against)

BEEKMAN WINES & LIQUORS, INC.,)
30 West Palisade Avenue,)
Englewood, New Jersey,)

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Dis-)
tribution License D-8, issued)
by the Common Council of the)
City of Englewood.)

Frazer, Stoffer & Jacobs, Esqs., Attorneys for Defendant-Licensee.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant has pleaded non vult to a charge alleging that it falsely concealed and suppressed in its license application that Harry Shaw is the real and beneficial owner of all of the capital stock of the corporate licensee.

At the time when the application was executed, the law required that a holder of more than 10% of the stock of a corporate applicant be a resident of this state for at least five years prior to the submission of the application. Being thus disqualified, Harry Shaw caused the stock of the corporation, all of which was in reality owned by him, to be held on his behalf by other persons.

On March 27, 1943, the Alcoholic Beverage Law (R.S. 33:1-25) was amended by substituting in place of the five-year residence qualification, a requirement that a holder of more than 10% of the stock of a corporate applicant be a bona fide resident of this state. See P.L. 1943, c. 46.

Pursuant to this amendment, Harry Shaw has submitted sworn statements from which it appears that all of the corporate stock, with the exception of single shares held by each of two qualifying shareholders, has been placed in his name, and that he has been a bona fide resident of this state for at least several months last past. It further appears that, in accordance with R.S. 33:1-34, the local issuing authority has been notified of the change in stock ownership.

In view of the guilty plea, the correction of the unlawful situation and the absence of any previous record against this licensee, I shall impose a suspension of ten days. Re Tenafly Tavern, Inc., Bulletin 568, Item 6.

Accordingly, it is, on this 10th day of June, 1943,

ORDERED, that Plenary Retail Distribution License D-8, heretofore issued by the Common Council of the City of Englewood to Beekman Wines & Liquors, Inc. for premises 30 West Palisade Avenue, Englewood, be and the same is hereby suspended for a period of ten (10) days, commencing at 1:00 A.M. June 14, 1943, and terminating at 1:00 A.M. June 24, 1943.

ALFRED E. DRISCOLL,
Commissioner.

9. LICENSE TERMS - LICENSES ARE ISSUABLE ONLY FOR THE TERMS SPECIFIED BY STATUTE - A PLENARY RETAIL CONSUMPTION LICENSE MAY NOT BE ISSUED FOR A SIX MONTHS TERM COMMENCING JULY 1st.

LICENSE FEES - MUST BE UNIFORM FOR ALL MEMBERS OF EACH LICENSE CLASSIFICATION.

RETAIL LICENSE - MAY NOT BE ISSUED UNLESS FEE IS FIXED BY FORMAL MUNICIPAL REGULATION.

June 10, 1943

Mr. Emilio E. Perona
Andover, New Jersey

Dear Mr. Perona:

I have your letter of June 5th stating that your licensed premises have been closed since December 1st because of the gasoline shortage, and that you have asked the local committee to issue a license for six months which they have refused to do. You wish to know if their refusal is justifiable.

The Township Committee's refusal was entirely justifiable - the Committee has no authority to issue a plenary retail consumption license for a six months period commencing July 1st.

Licenses other than seasonal are for a term of one year from the first day of July in each year. The respective fees are prorated according to the effective date of the license and based on the respective annual fee. (R. S. 33:1-26.) The full amount of the required license fee must be deposited when the application is filed. (R. S. 33:1-25.) There can be but one fee for each type of license and the fee must be uniform for all members of the class.

A seasonal retail consumption license entitles the holder to sell alcoholic beverages during the summer season from May 1st until November 1st inclusive, or during the winter season from November 15th until April 15th inclusive. If a seasonal retail consumption license is to be issued, the fee therefor must be fixed by the municipal governing body at seventy-five per cent of the fee fixed for plenary retail consumption licenses. (R. S. 33:1-12, paragraph 2.) Our records show that this type of license has never been provided for in Andover Township. Before a seasonal license can be issued, the Committee must fix the fee therefor by ordinance in conformity with the statute.

Very truly yours,

ALFRED E. DRISCOLL,
Commissioner.

10. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

JOHN DONOHUE)
t/a DONOHUE'S)
265 North Day Street)
Orange, New Jersey)

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consumption License C-35, issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange.)

John Donohue, Pro Se.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleads guilty to the following charge:

"On April 30, 1943 you possessed an illicit alcoholic beverage at your licensed premises, viz., a 4/5th quart bottle labeled 'Old Drum Brand Blended Whiskey 85 Proof', which bottle contained alcoholic beverage which was not genuine as labeled; such possession being in violation of R. S. 33:1-50."

It appears that this is defendant's first adjudicated offense in the eight years he has held a license. In 1938, following the seizure by Federal agents of two bottles of liquor, allegedly not genuine as labeled, the licensee received a warning letter from the Department.

The defendant was not on the licensed premises when the instant violation was discovered by an investigator of this Department as he had been confined to his home for a week prior thereto by sickness. The investigator also found three and one-half cases of genuine Old Drum whiskey in the tavern. The defendant testified that after the receipt of the aforesaid warning letter he had instructed his bartenders never to substitute one brand of liquor for another and that he could not explain this violation.

I am impressed with the sincerity of the defendant's testimony: I shall accordingly impose the minimum penalty of a ten (10) day suspension. See Re Reineke, Bulletin 570, Item 3.

Accordingly, it is, on this 11th day of June, 1943,

ORDERED that Plenary Retail Consumption License C-35, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange to John Donohue, t/a Donohue's, for premises 265 North Day Street, Orange, be and the same is hereby suspended for ten (10) days, commencing at 2:00 A. M. June 15, 1943 and terminating at 2:00 A. M. June 25, 1943.

ALFRED E. DRISCOLL
Commissioner.

11. APPELLATE DECISIONS - TITGENS AND BOCK v. SAYREVILLE.

AUGUSTA TITGENS and PAULA BOCK,)	
trading as Titgens Bar and)	
Restaurant,)	
)	
Appellants,)	
)	
-vs-)	On Appeal
)	
MAYOR AND COUNCIL OF THE)	CONCLUSIONS AND ORDER
BOROUGH OF SAYREVILLE,)	
)	
Respondent.)	
)	
- - - - -		

Benjamin Kleinberg, Esq., Attorney for Appellants.
Joseph T. Karcher, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the refusal to renew a plenary retail consumption license for the year 1942-43 for premises located at Morgan Yacht Basin, Borough of Sayreville.

Respondent asserts, in substance, the following grounds for its refusal to grant a renewal: (a) the location of the premises is undesirable; (b) there are more licensed premises in the immediate area than it can legitimately support; (c) the licensees are not fit persons to hold a license; (d) the premises have acquired an unsavory reputation.

If supported by the evidence, the objections enumerated constitute valid reasons why a license should not be renewed. On the appeal, the evidence was largely confined to the fitness of the appellants, with particular emphasis on the qualifications of the appellant, Augusta Titgens.

It lies within the sound discretion of an issuing authority to determine whether an appellant is worthy of a renewal license, for no licensee enjoys a vested right to a renewal. American Legion v. Beverly, Bulletin 200, Item 14. Cf. Bumball v. Burnett, 115 N.J.L. 254. The sale of intoxicating liquor is in a class by itself. Paul v. Gloucester, 50 N.J.L. 585, 595. "No one has a right to demand a license: license is a special privilege granted to the few, denied to the many." Ibid 596. Nonetheless the determination not to grant a renewal must be founded upon valid and substantial grounds. Jones v. Absecon, Bulletin 218, Item 1.

After carefully reviewing the record in this case, I have reached the conclusion that the determination of respondent not to grant a renewal is amply supported by the testimony. In August of 1941, following a hearing before the municipal issuing authority, the appellant, Augusta Titgens, was found guilty of the following: violation of Rule 22 of State Regulations No. 20 - permitting a female employee to accept alcoholic beverages at the expense of patrons; violation of R.S. 33:1-77 and Rule 1 of State Regulations No. 20 - sale of alcoholic beverages to a minor; violation of Section 1 of the local ordinance - sale of alcoholic beverages during prohibited hours and failing to close the licensed premises during the same period. The license, at the time the violations were uncovered in the early part of 1941, was in the name of Augusta Titgens individually. The license for the fiscal year 1941-42 was issued in the names of Augusta Titgens

and Paula Bock (partners), subject to a special condition that it should be subject to any order of suspension or revocation which might be made in the then pending disciplinary proceedings. Accordingly, the license held by the appellants was suspended for a period of fifteen days.

The granting of a new license to Augusta Titgens and Paula Bock for the fiscal year 1941-42 did not deprive the issuing authority of the right to reconsider the appellants' eligibility for a license following their application in June of 1942 in view of the fact that the hearing on the violations first mentioned did not occur until after the 1941-42 license was issued. Cf. Zicherman v. Newark, Bulletin 227, Item 7.

In 1935-1936 the appellant, Augusta Titgens, then known as Augusta Norman, held a license for premises located at 328 River Street, Hoboken. This license was revoked by the municipal issuing authority on March 31, 1936 for a violation of R.S. 33:1-34. In April of 1938 she was arrested, charged with being a disorderly person, in violation of R.S. 2:202-4. (permitting known prostitutes to use her telephone and solicit for immoral purposes), found guilty in Police Court, and fined \$50.00. One of these alleged prostitutes subsequently appeared on the scene in Sayreville and was involved in the charges of which appellant Titgens was found guilty.

In her first application for a license in Sayreville, Augusta Titgens failed to disclose either the revocation of her previous license in Hoboken or her conviction as a disorderly person. In subsequent applications, while she disclosed the revocation and also that on two occasions (1934 and 1936) she had been found guilty of disorderly conduct, she either failed to disclose or to accurately describe her conviction as a disorderly person in 1938.

R.S. 33:1-24 provides:

"It shall be the duty of each (municipal) issuing authority to receive applications for such licenses as such (municipal) issuing authority is authorized to issue; to investigate applicants and to inspect premises sought to be licensed; to conduct public hearings on applications and revocations; to enforce primarily the provisions of this chapter and the rules and regulations so far as the same pertain or refer to or are in any way connected with retail licenses, except plenary retail transit licenses; to maintain proper records; to keep full and correct minutes; and to do, perform, take and adopt all other acts, procedures and methods designed to insure the fair, impartial, stringent and comprehensive administration of this chapter. The enumeration of the above specific duties shall not be construed to limit or restrict in any way the general authority given by this chapter to each said (municipal) issuing authority."
(Underlining ours)

The Alcoholic Beverage Law imposes serious responsibilities upon issuing authorities. Perhaps the most important of these is the consideration of applications for licenses. The burden of proving that the respondent acted improperly in the performance of its duties

rests with the appellant. The record in this present case fails to disclose any evidence that the action of respondent was fraudulent, corrupt or inspired by improper motives. On the contrary, the testimony supports the refusal of the respondent to grant the license. Respondent was justified in refusing to renew the license because of the previous misconduct of the appellant, August Titgens.

The appellant Bock must stand or fall with her partner.

The action of respondent is affirmed.

Accordingly, it is, on this 11th day of June, 1943,

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

ALFRED E. DRISCOLL,
Commissioner.

12. DISCIPLINARY PROCEEDINGS - CHARGE OF SELLING ALCOHOLIC BEVERAGES TO A MINOR - DISMISSED FOR LACK OF PROOF.

In the Matter of Disciplinary Proceedings against
THE RATHSKELLER, INC.,
129 Albany Street,
New Brunswick, New Jersey,
Holder of Plenary Retail Consumption License C-26 issued by the Board of Commissioners of the City of New Brunswick.

CONCLUSIONS
AND
ORDER

Alex Eber, Esq., Attorney for Defendant-licensee.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On May 24, 1943, defendant was served with a copy of charges alleging that, on May 15, 1943 and May 17, 1943, it sold alcoholic beverages to Sergeant Clarence ---, a minor, in violation of R.S. 33:1-77 and Rule 1 of State Regulations No. 20.

On June 1, 1943, the date set for the hearing, the Department was unable to produce the minor or its other witnesses, all of whom are in military service. The Hearer thereupon adjourned the case until June 4, 1943. At the adjourned hearing counsel for the Department stated that neither Sergeant Clarence --- nor any of the other witnesses was available to testify. It is apparent from an investigation made by agents of the Department that it may not be possible to obtain the testimony of these witnesses until the conclusion of the war. The defendant was present on June 1 and again on June 4, prepared to proceed with its defense.

In the absence of any proof, it is impossible to consider the case upon its merits.

In fairness to the licensee, the charges should not be permitted to remain open indefinitely. Licensee is on notice that it must scrupulously obey the law and take such precautions as may

be necessary to prevent the sale of alcoholic beverages to minors, either in or out of uniform.

Accordingly, it is, on this 11th day of June, 1943,

ORDERED that the above case be nolle prossed.

ALFRED E. DRISCOLL,
Commissioner.

13. APPELLATE DECISIONS - THE CASABLANCA COMPANY v. WILDWOOD

THE CASABLANCA COMPANY, a)
corporation of the State of)
New Jersey,)
Appellant,)

On Appeal

-vs-

CONCLUSIONS AND ORDER.

BOARD OF COMMISSIONERS OF THE)
CITY OF WILDWOOD,)
Respondent.)
- - - - -)

T. Millet Hand, Esq., Attorney for Appellant,
Irving Shenberg, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from respondent's refusal to grant appellant's application for a transfer of a plenary retail consumption license held by Charles Albini for premises 4100 Atlantic Avenue to itself for premises 224 East Oak Avenue.

Respondent predicated its refusal on the lack of any need for an additional consumption license in the proposed area and also because of the objections received from persons residing in the neighborhood.

The City of Wildwood is primarily a summer seashore resort. East Oak Avenue, although zoned as a business district, is not essentially a business street as such is known in the ordinary urban metropolis. On that street, between Atlantic and Pacific Avenues, where the appellant desires to locate, there are a number of rooming houses catering to summer boarders. Three of these rooming houses are located almost immediately across from the proposed site. Another, on the same side of the street, is less than 15 feet from appellant's premises, while another is about 75 feet distant. Several of the proprietors of these boarding establishments protested against the present application on the ground that the peace and quiet of that neighborhood, already strained by the existing licensed places on that street, would be further disturbed if appellant's application were granted.

The proposed tavern is located on the south side of East Oak Avenue, in the middle of the block between Atlantic and Pacific Avenues. On the southwest corner of Oak and Atlantic Avenues there is a tavern, and two more are located on the north side of East Oak Avenue, one less than 100 feet from the premises in question, and the other less than 200 feet away. It would appear that the three existing licensed premises on that street are amply sufficient to cater to the needs of the persons residing there, even taking into consideration the increased summer population.

The determination of whether a license shall be transferred to a particular location is one which is subject, in the first instance, to the reasonable discretion of the local issuing authority. Such a determination may be reversed only where it appears that it is founded upon an abuse of such discretion. Where, as here, an issuing authority refuses to place a fourth tavern in such close proximity to three others situated on the same street, it cannot be said that such action warrants a finding of an abuse of discretion.

A liquor license does not carry with it any inherent right of transfer. The transfer of a liquor license is, with certain exceptions not here material, as much a privilege as is the original issuance of a liquor license. With respect to the latter, it was said by Justice Parker in Bumball v. Burnett, 115 N.J.L. 254 (Sup. Ct.) at p. 255:

"Prosecutor argues apparently that a liquor license is to be obtained and is obtainable on the same theory as a license to carry on, say a grocery business, demandable by any respectable citizen on payment of the prescribed fee: but that is not the case. The sale of intoxicating liquor is in a class by itself. Paul v. Gloucester, 50 N.J.L. 585, 595. 'No one has a right to demand a license: license is a special privilege granted to the few, denied to the many.' Ibid. 596. 'There is no inherent right in a citizen to sell intoxicating liquors by retail. It is not a privilege of a citizen of the State of the United States.' Meehan v. Board, 29 N.J.L.J. 370; 64 Atl. Rep. 689. See, also, Hagan v. Boonton, 62 N.J.L. 150."

Reference is made by appellant's counsel to the case of Lincoln Avenue Corporation v. Wildwood, Bulletin 540, Item 2, where I reversed a decision by the local Board denying an application to transfer a license to the northwest corner of Oak and Atlantic Avenues. In that case, the premises from which it was desired to transfer the license was located but three blocks distant and in the same general area as that of Oak Avenue. I there held that, since the old and new premises were in a single area where there was a heavy concentration of licensed establishments, the proposed transfer would not aggravate that concentration. In this case, the premises of the transferor are located more than seven blocks from appellant's premises and approximately 2,000 feet separate the two places. Moreover, as respondent's Mayor testified, the premises involved in the Lincoln case, supra, are much further removed from the boarding houses on East Oak Avenue and none of the proprietors thereof had objected to that application.

Under the circumstances, I have no other choice than to affirm the decision of the municipal licensing authority.

Accordingly, it is, on this 14th day of June, 1943,

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

Alfred E. Driscoll
Commissioner.