

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

BULLETIN 299

FEBRUARY 14, 1939.

1. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - SALE TO SIXTEEN
YEAR OLD MINOR - THIRTY DAYS.

In the Matter of Disciplinary)
Proceedings against)

KARL F. WAGNER,)
600 South 10th St.,)
Newark, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-476, issued by)
the Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)
-----)

Stanton J. MacIntosh, Esq., Attorney for the State Department of
Alcoholic Beverage Control.
William R. Strickland, Esq., Attorney for the Licensee.

BY THE COMMISSIONER:

The defendant is charged with selling and serving beer to a minor, contrary to Statute and State Rule, and also with selling and serving the same while the recipient was actually or apparently intoxicated, in violation of State Rule.

On the night of August 20 last, a 16 year old girl, after having consumed three glasses of beer elsewhere earlier during the evening, entered the defendant's tavern with her mother and a friend. There, so they declare, the defendant's waiter served two rounds of beer to them, including the minor, and made no inquiry as to her age. At about midnight, the girl, after being in the tavern approximately an hour, left, alone, stating that she was going home. She walked a short distance from the tavern and suddenly lost consciousness. She was taken to the City Hospital and there treated for "acute alcoholism."

The defendant admits the service of the first (but not the second) round of beer. He testified that, after seeing the party of three enter the tavern, he warned the waiter to inquire as to the girl's age. The waiter testified that he served one round of beer to the three; that, before serving that round, he inquired of the girl's age and was told by the girl's companions that she was "all right."

I find the defendant guilty as to the charge of sale and service to a minor.

The story that inquiry was made as to the girl's age before service to her, even if true, presents no mitigating circumstances. Under that story, the girl's youthful appearance concededly aroused the quick suspicion of the defendant himself. The waiter's perfunctory inquiry and his ready acceptance of an assuring answer, such as is here alleged to have occurred, in no whit lessens the culpability of the defendant. The girl was but sixteen years of age. There is no excuse for this.

so fixed and was also subject to a penalty for a non observance of the regulation. Id. 105. After the revolution, like provisions were reenacted, together with a ban on gaming of any sort, in places where liquor was sold. Paterson, 237-238. The Court of Common Pleas, for a long time, under legislative direction continued to grant licenses and fixed the prices for the liquor at its Spring Session. Nixon's Digest, p. 340, sec. 21, Revision 1846-7, sec. 21, p. 581. This provision was, however, repealed before the Revision of 1877. In that work the bulk of the act, as contained in the Revision of 1846-7, was continued with the additions of various supplements authorizing the granting of licenses in some municipalities by township committees or common council, vesting in them discretion in the amount of licensee fees and the control of the sale of liquor.

Chapter 208, P. L. 1938, p. 492 is as follows: "Whereas, Alcoholic beverage licensees have been unduly stimulating the sale of alcoholic beverages by indiscriminate price cutting, resulting in price wars, and by excessive advertising of bargain values and cut prices; these practices are deemed detrimental to the proper operation of the liquor industry and contrary to the interests of temperance; the sale of alcoholic beverages is unusually susceptible to abuse, with resulting danger to the general public and should be strictly supervised and regulated to prevent undue stimulation of public demand for alcoholic beverages; therefore, * * * 1. The State Commissioner of Alcoholic Beverage Control is hereby vested with the following powers to be exercised in such manner as will assist in properly supervising the liquor industry and promoting temperance; The commissioner may, in his discretion, by rule and regulation, prohibit or regulate the sale of alcoholic beverages within this State in violation of any fair trade contract entered into pursuant to the legislative sanction afforded by Revised Statutes, Title 56, Chapter four."

Chapter 165, P. L. 1938, p. 375, referred to, purported to protect the owner of trade marked articles from resale, except at the price fixed by contract.

After the enactment of this legislation, and pursuant to the power vested in the Commissioner by the Control Act of 1933, R. S. 33:1, he promulgated Regulation 30. Sections 6 and 7 are as follows:

6. Whenever any such contract and price list or altered contract or price list is filed and published as aforesaid, no retail licensee shall sell any product affected thereby except (2) at the price stipulated therein by the manufacturer or wholesaler; or (b) pursuant to and within the terms, conditions and limitations of a special permit first obtained from the Department of Alcoholic Beverage Control.

7. Application by a retail licensee for special permit authorizing the sale of any particular product affected by a Fair Trade contract without regard to the price stipulated therein will be entertained in the following situations: (a) where the product was actually possessed by the retailer prior to the execution of the Fair Trade contract; (b) where the retailer is actually closing out his stock for the purpose of discontinuing delivering such product; (c) where the product is damaged or deteriorated in quality and notice is given to the public thereof; and (d) where the sale of the product is by an officer acting under orders of any Court."

We regard the regulation in question as a valid exercise of the Commissioner's inherent power under the Control Act. The act of 1938 was unnecessary to confer power to enact the regulation in question. We, therefore, need not consider any question of the constitutionality of the latter enactment.

Prosecutor argues that the 1938 statute is unconstitutional in that it is a delegation of legislative power in violation of Articles III and IV, section 1 of the State Constitution. We do not think so. His argument, however, since it would apply equally in our view of the matter, viz. to the Control Act, will be considered.

The Liquor Control Act of 1933 (R. S. 33:1), provides in Section 3 (R. S. 33:1-3) that "it shall be the duty of the commissioner to supervise the manufacture, distribution and sale of alcoholic beverages in such a manner as to promote temperance and eliminate the racketeer and bootlegger." Section 36 (R. S. 33:1-39) provides that the Commissioner may promulgate such rules and regulations "as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages and the enforcement of this act." The section enumerates subjects which might be regulated including "unfair competition" and "Practices unduly designed to increase consumption of alcoholic beverages." The Commissioner was authorized to promulgate regulations on "such other matters whatsoever as are or may become necessary in the fair, impartial, stringent and comprehensive administration" of the act. In section 74 (now R. S. 33:1-73), it was provided that the act was intended to be remedial of abuses in liquor traffic and should be liberally construed.

The powers of the Commissioner are very broad and have been so construed. *Franklin Stores Co. v. Burnett*, 120 N. J. L. 596. Before the Commissioner promulgated Regulation 30, the sale of intoxicants was disturbed by price cutting and continual mail and house circular campaigns tending to disturb the orderly conduct of the liquor business and resulted, in many instances, in an increased public indifference to sobriety and a wise expenditure of money. For over a hundred years, the courts of this State and its predecessor government fixed the price, under legislative permit, at which a tavern keeper should sell liquor. The State, by means of commissions and law, has fixed the price to be charged by railroads, transportation companies, investors, bankers, gas and electric companies, telegraph and telephone companies and insurance companies. Price fixing, in the purchase and sale of milk, was recently upheld in an exhaustive opinion by Mr. Justice Heher in *State Board of Milk Control v. Newark Milk Co.*, 118 N. J. E. 504.

The argument as to unconstitutionality seems to be because the act leaves price fixing to the volition of the Commissioner. He may or may not act it is said. We think this must be so, but the granting of liquor licenses has always been vested in those who could exercise a reasonable discretion and who could impose reasonable regulation. The sale of liquor has never been, in this State, a business of right. The legislature has always granted the widest discretion to officers charged with duties with respect to the granting of liquor licenses. They have acted with discretion, i. e., in the granting of licenses, the time of day and night when sales may be made, the character of the premises used, the amount of the license fee to be exacted, the prices to be charged for liquor, and countless other matters too numerous to mention. Fixing the price, at which liquor is to be sold, is an ancient method to prevent abuse in the use of a commodity of such social disadvantage. The legislative policy is clear and it provided a definite enough rule of action in the Control Act. The Commissioner is there charged with a duty to make the regulations necessary, in his judgment, in order to secure a fair administration of the law permitting the sale of intoxicating liquor. Nothing can promote greater fairness in the liquor trade than to fix the price of sale. All dealers and customers stand precisely on the same footing.

We do not feel called upon to consider any question of the unconstitutionality of the 1938 act under Article IV, sec. 7, subsection (4) of the State Constitution, because the regulation complained of, as has been shown, was well within the powers of the Commissioner under the Control Act. See Franklin Stores Co. v. Burnett, 120 N. J. L. 596.

The writ will be dismissed with costs.

3. DISCIPLINARY PROCEEDINGS - GAMBLING - MITIGATION OF PENALTY.

In the Matter of Disciplinary Proceedings against
GEORGE COHEN,
435 Hudson Avenue,
West New York, New Jersey,
Holder of Limited Retail Distribution License No. DL-5, issued by the Board of Commissioners of the Town of West New York.

ORDER

BY THE COMMISSIONER:

After a personal inspection of the wooden box described in Re Cohen, Bulletin 295, Item 3, I find that only one compartment contained candy valued at five cents; that the other seven compartments contained candy valued at one cent, and that each child who paid one cent received candy of at least that value after the arrow had been spun. While the box is technically a device or apparatus designed for gambling purposes, I am satisfied that the licensee had no intention of violating the State Regulations by possessing it, and I have been assured that the box will not be used again on the licensed premises.

For these reasons, I have decided to lift entirely that portion of the penalty heretofore imposed, which was based upon the violation of Rule 7 of State Regulations No. 20.

Accordingly, it is on this 9th day of February, 1939,

ORDERED that the suspension heretofore imposed be reduced from twenty-five to twenty days, and that the Order entered on January 22, 1939 otherwise remain in full force and effect.

D. FREDERICK BURNETT,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary)
 Proceedings against)
)
 SIMON'S DELICATESSEN, INC.,)
 149 Main Street,)
 Hackensack, N. J.,)
)
 Holder of Plenary Retail Distri-)
 bution License D-15, issued by)
 the City Council of the City of)
 Hackensack.)
 -----)

CONCLUSIONS
AND ORDER

Richard E. Silberman, Esq., Attorney for the State Department of
Alcoholic Beverage Control.

Philip Simon, President of Simon's Delicatessen, Inc., for the
Licensee.

BY THE COMMISSIONER:

The defendant pleaded guilty to the charge of selling to an investigator of this Department, on November 28, 1938, a fifth bottle of Martin's V.V.O. Scotch (whose Fair Trade price was \$3.25) for \$2.98 in violation of Rule 6 of State Regulations 30.

The sale was made by one of the defendant's clerks. When made, the purchaser identified himself as an investigator and called the clerk's attention to the Fair Trade violation. The clerk expressed surprise that the item was on Fair Trade and asked the investigator to find it in the clerk's list of Fair Trade prices. The item was found correctly listed therein.

The clerk testified that, at the time of the sale, three bottles of King William Scotch and three bottles of Martin's V.V.O. Scotch were on the same top shelf; that a regular "\$2.98" price tag was on the shelf in front of the King William and (unknown to the clerk) a pencil notation of "\$3.25" in front of the Martin's V.V.O.; that to the time of the sale, he had been employed but six weeks and had never sold a bottle of either King William or Martin's V.V.O.; that, when making the sale in question, he assumed that the "\$2.98" price tag in front of the King William referred also to the Martin's V.V.O. However, he admits that, at the time, he was in possession of the list of Fair Trade prices.

A liquor licensee is strictly accountable for sale of liquor by any of its employees in violation of the Fair Trade Regulations. Re Conte, Bulletin 293, Item 13. The fact that, here, the sale resulted from carelessness in arranging price tags or the clerk's neglect to examine the shelf for the pencil notation thereon, does not lessen the defendant's responsibility.

The defendant's license will be suspended for ten (10) days.

Accordingly, it is, on this 9th day of February, 1939, ORDERED that Plenary Retail Distribution License D-15, heretofore issued to Simon's Delicatessen, Inc. by the City Council of the City of Hackensack, be and the same is hereby suspended for a period of ten (10) days. Pursuant to notice of December 17, 1938, Bulletin 289, Item 1, the effective date of such suspension is reserved for future determination.

D. FREDERICK BURNETT,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against)

DOMINICK GUGLIELMI, 2222 Federal Street, Camden, New Jersey,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License No. C-114, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)

Dominick Guglielmi, Pro Se. Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charge was served upon the licensee alleging that, on December 23, 1938, he sold a one pint bottle of "Gray's Rock & Rye" below the minimum retail price, in violation of State Regulations No. 30.

On December 23, 1938, Investigator Lockwood, of this Department, purchased a pint of "Gray's Rock & Rye" for ninety-five cents from James Tracy, the bartender who was then in charge of the licensed premises. The minimum retail price of the item is \$1.00 per pint.

The investigator testified that a pint bottle of the same item in the show window bore a price tag reading "95¢"; that, so far as the investigator knew, the prices displayed on the other liquor items in the window were correct.

Licensee testified that he carries about two hundred different brands; that, when he received the pamphlet price list, he spent over five hours checking prices; that he did not notice that "Gray's Rock & Rye" was listed in said pamphlet at \$1.00 a pint; that the item in question is a slow seller.

In view of licensee's record, which is otherwise clear, I shall consider all these facts in fixing the penalty. The license will be suspended for five (5) days.

Accordingly, it is, on this 9th day of February, 1939,

ORDERED that Plenary Retail Consumption License No. C-114, heretofore issued to Dominick Guglielmi by the Municipal Board of Alcoholic Beverage Control of the City of Camden, be and same is hereby suspended for a period of five (5) days.

Pursuant to notice of December 17, 1938, Bulletin 289, Item 1, the effective date of such suspension is reserved for future determination.

D. FREDERICK BURNETT, Commissioner.

6. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary)
 Proceedings against)
)
 CEASAR CAMPANA,)
 600 Point Street,)
 Camden, New Jersey,)
)
 Holder of Plenary Retail Consump-)
 tion License No. C-111, issued by)
 the Municipal Board of Alcoholic)
 Beverage Control of the City of)
 Camden.)
 -----)

CONCLUSIONS
AND ORDER

Ceasar Campana, Pro Se.
 Richard E. Silberman, Esq., Attorney for the Department of
 Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charge was served upon the licensee alleging that, on December 23, 1938, he sold one pint bottle of Calvert's "Reserve" Blended Whiskey below the minimum retail price, in violation of State Regulations No. 30.

Investigator Roberts, of this Department, testified that on December 23, 1938, he purchased a pint bottle of Calvert's "Reserve" Blended Whiskey for \$1.39 from the licensee, who was then in charge of the premises; that the price "\$1.39" was written in pencil upon the box containing the item in question; that the licensee admitted that he was acquainted with the Fair Trade prices. The minimum retail price of the item is \$1.45 per pint.

The licensee testified that he believed a salesman had told him the price of Calvert's "Reserve" was \$1.39; that, when checking his prices after receiving the price pamphlet, he thought it unnecessary to look at the price of Calvert's "Reserve" because he thought he had the right price in the first place.

The licensee is guilty as charged. I shall suspend his license for ten days.

Accordingly, it is, on this 9th day of February, 1939,

ORDERED that Plenary Retail Consumption License No. C-111, heretofore issued to Ceasar Campana by the Municipal Board of Alcoholic Beverage Control of the City of Camden, be and same is hereby suspended for a period of ten (10) days.

Pursuant to notice of December 17, 1938, Bulletin 289, Item 1, the effective date of such suspension is reserved for future determination.

D. FREDERICK BURNETT,
Commissioner.

7. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against
 SOLOMON GONCHAROFF,
 1705 Broadway,
 Camden, New Jersey,
 Holder of Plenary Retail Distribution License No. D-11, issued by the
 Municipal Board of Alcoholic Beverage Control of the City of Camden.

CONCLUSIONS
AND ORDER

Solomon Goncharoff, Pro Se.
 Samuel B. Helfand, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charge was served upon the licensee alleging that, on December 16, 1938, he sold a pint bottle of Wilson "That's All" whiskey below the minimum retail price, in violation of State Regulations No. 30.

On December 16, 1938, Investigator Roberts, of this Department, purchased a pint bottle of Wilson "That's All" whiskey for \$1.10 from William Goncharoff, the son of the licensee, who was in charge of the licensed premises. The minimum retail price of the item is \$1.16 per pint.

William Goncharoff admitted to the investigators that he was aware of the Fair Trade price, but stated that he did not realize that the Commissioner was enforcing the Fair Trade Act.

The licensee is responsible for the acts of his employees performed within the scope of their duties, and, since the item was sold at less than the minimum Fair Trade price, the licensee is guilty as charged.

I shall suspend his license for ten (10) days.

Accordingly, it is on this 9th day of February, 1939,

ORDERED that Plenary Retail Distribution License No. D-11, heretofore issued to Solomon Goncharoff by the Municipal Board of Alcoholic Beverage Control of the City of Camden, be and same is hereby suspended for a period of ten (10) days.

Pursuant to notice of December 17, 1938, Bulletin 289, Item 1, the effective date of such suspension is reserved for future determination.

D. FREDERICK BURNETT,
 Commissioner.

8. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against)
 ANASTAS MICHAEL,)
 943 Broadway,)
 Camden, New Jersey,)
 Holder of Plenary Retail Consumption License No. C-193, issued by)
 the Municipal Board of Alcoholic Beverage Control of the City of)
 Camden.)
 -----)

CONCLUSIONS AND ORDER

Sidney P. McCord, Jr., Esq., Attorney for the Licensee.
 Samuel B. Helfand, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charge was served upon the licensee alleging that, on December 16, 1938, he sold a pint bottle of Wilson "That's All" whiskey below the minimum retail price, in violation of State Regulations No. 30.

Investigators Lockwood and Roberts, of this Department, visited the licensed premises on December 16, 1938. Investigator Lockwood ordered a pint bottle of Wilson "That's All" whiskey from the licensee, who thereupon gave him the bottle and told him that the price was \$1.10. The investigator paid the price asked by the licensee. The minimum retail price of the item is \$1.16 per pint.

The licensee admits that he sold the item in question for \$1.10 and that he knew that the Fair Trade price was \$1.16.

Licensee alleges entrapment and appears to base this defense upon the allegation that another man, who was in his place of business at the time Investigator Lockwood made the purchase in question, had previously attempted to buy the same item for \$1.10 a pint. The licensee, however, admits that the investigator did not ask him to sell the item below the Fair Trade price. The evidence falls far short of showing entrapment. The licensee is guilty as charged.

I shall suspend his license for ten (10) days.

Accordingly, it is on this 9th day of February, 1939,

ORDERED that Plenary Retail Consumption License No. C-193, heretofore issued to Anastas Michael by the Municipal Board of Alcoholic Beverage Control of the City of Camden, be and the same is hereby suspended for a period of ten (10) days.

Pursuant to notice of December 17, 1938, Bulletin 289, Item 1, the effective date of such suspension is reserved for future determination.

D. FREDERICK BURNETT,
 Commissioner.

9. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application)	
to Remove Disqualification because)	
of a Conviction, Pursuant to the)	
Provisions of R. S. 33:1-31.2 (as)	CONCLUSIONS
amended by Chapter 350, P.L. 1938))	AND ORDER
Case No. 46)	
-----)	

Mario V. Farco, Esq., for the Petitioner.

BY THE COMMISSIONER:

R. S. 33:1-25, 26 provides that no one convicted of a crime involving moral turpitude may hold a liquor license or be employed by a liquor licensee in this State.

Between 1925 and 1937, petitioner was convicted on five occasions for violating a municipal ordinance - once for gambling, once for interfering with a police officer, and three times for loitering.

Since violations of a municipal ordinance are not "crimes" within the meaning of R. S. 33:1-25, 26, petitioner's above convictions of local ordinance do not disqualify him under those sections. Zicherman v. Newark, Bulletin 227, Item 7; Re Case No. 213, Bulletin 232, Item 5.

However, petitioner was convicted in April 1926 of running a gambling house (a 2-room gambling club where dice games were played), fined \$102.50, and given a 3-month suspended sentence. In November 1932, he was convicted of grand larceny by trick (for duping a person out of \$45.00 at that variation of the "old army game" known as "3-card monte"), and fined \$50.00.

Running a commercialized gambling house, and grand larceny by trick in "3-card monte", are crimes which ordinarily involve moral turpitude. No facts are here present which cleanse petitioner's crimes of that element. Hence, petitioner's convictions of crime in 1926 and 1932 disqualify him from holding a liquor license or being employed by a liquor licensee in this State.

Petitioner prays, however, that this disqualification be lifted under R. S. 33:1-31.2, as amended by L. 1938, c. 350, which authorizes the State Commissioner, in his sound discretion, to remove such ineligibility five years or more after the disqualifying conviction.

Petitioner is 49 years of age, colored, and married. He has resided in Newark since his conviction in 1932, and engaged in odd jobs of manual labor until September 1938, when he obtained employment as a bartender in a tavern. He continued as such bartender until December 1938, when Deputy Chief Sebold of the Newark Police Department advised him to seek a determination from the State Commissioner as to whether he was qualified to be employed by a liquor licensee.

At the hearing, petitioner produced three character witnesses.

The first such witness, the Pastor of the Zion Hill Baptist (Colored) Church in Newark, testified that he has known petitioner since 1920; that petitioner, although not an enrolled member of the church, nevertheless attends services there; that he has come in contact with petitioner every week, and sometimes daily, during the last six years; that he considers petitioner's character and reputation in the neighborhood of the church to be good.

The second character witness, the tavern keeper who employed petitioner as a bartender, testified that he has known petitioner since 1931, when he first became acquainted with him as a customer in a grocery store then being operated by the witness; that petitioner lives five blocks from his home; that petitioner's reputation in the neighborhood is good; that he, himself, has found petitioner reliable, industrious, and honest; that he plans, if permitted, to rehire petitioner.

The third witness, a man in the waste paper business, testified that he has known petitioner for the last six years; that he became acquainted with petitioner when the latter visited the witness' business premises and also trucking premises next door, looking for work; that he believes petitioner's reputation is good and that petitioner is now honest and law abiding.

The only indication that petitioner may not have been leading an honest and law-abiding life since 1932 is his conviction in 1937 for loitering in violation of local ordinance. However, I do not believe that this single lapse - not a "crime" and, in itself, not serious - overcomes petitioner's otherwise clear record since 1932 and the favorable testimony of his character witnesses.

As for petitioner's serving as a bartender from September to December 1938, I am satisfied that he was unaware of his disqualification from such employment. He ceased work immediately upon being advised by the Deputy Police Chief as to his possible ineligibility, and filed the present petition.

In view of the foregoing, I conclude that the petitioner has led an honest and law-abiding life since 1932, and that his association with the liquor industry will not be prejudicial to the interests of the public or of that industry. His disqualification will be removed.

It is, therefore, on this 9th day of February, 1939,

ORDERED that petitioner's disqualification from holding a license or being employed by a licensee because of the convictions referred to herein, be and the same is hereby removed, in accordance with R. S. 33:1-31.2, as amended.

D. FREDERICK BURNETT,
Commissioner.

10. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against)
)
 JACOBS DRUG COMPANY,)
 197 Broadway,)
 Paterson, New Jersey,)
)
 Holder of Plenary Retail Distribution License No. D-62, issued by)
 the Board of Aldermen of the City)
 of Paterson.)
 -----)

CONCLUSIONS AND ORDER

Samuel B. Helfand, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charge was served upon the licensee alleging that, on December 20, 1938, it sold a half pint bottle of Donigan's Rock and Rye (plain) below the minimum retail price, in violation of State Regulations No. 30.

Samuel J. Jacobs, President of Jacobs Drug Company, admitted that he had sold the item in question to Investigators Hulin and Best, of this Department, for forty-nine cents whereas the minimum retail price of the item is fifty-three cents a half pint.

Mr. Jacobs testified that, when he received the price list, he and his clerk went over the prices but "slipped up" on this particular item; that the price of forty-nine cents was displayed on the bottle in the window and that all other liquor items bore proper prices; that the item in question was a slow seller, not more than three bottles having been sold since May 1938.

In view of appellant's record, which is otherwise clear, I shall consider all these facts in fixing a penalty. The license will be suspended for five days.

Accordingly, it is, on this 9th day of February, 1939,

ORDERED that Plenary Retail Distribution License No. D-62, heretofore issued to Jacobs Drug Company by the Board of Aldermen of the City of Paterson, be and same is hereby suspended for a period of five (5) days.

Pursuant to notice of December 17, 1938, Bulletin 289, Item 1, the effective date of such suspension is reserved for future determination.

D. FREDERICK BURNETT,
Commissioner.

11. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against
 ADOLPH HELD,
 Woodbury-Blackwood Road and High Street,
 Blackwood Terrace,
 Deptford Township, N. J.,
 Holder of Plenary Retail Distribution License No. D-2, issued by the Township Committee of the Township of Deptford.

CONCLUSIONS AND ORDER

Adolph Held, Pro Se.
 Samuel B. Helfand, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charge was served upon the licensee alleging that, on December 16, 1938, he sold a pint bottle of old "Mr. Boston" Orange Gin below the minimum retail price, in violation of State Regulations No. 30.

On December 16, 1938, Investigators Roberts, Lockwood and Riggins visited the licensed premises. They purchased a pint bottle of Old "Mr. Boston" Orange Gin for \$1.15 from William Held, a son of the licensee, who was in charge of the premises. The minimum Fair Trade price on said item is \$1.30 a pint.

Licensee admitted that he had received a Fair Trade price list, but said that he had slipped up on this one item which was included in his window display and bore a price tag of \$1.15; that he believes that all other bottles (probably two hundred or more) in his window display were priced correctly; that the item in question is a slow seller.

In view of licensee's record, which is otherwise clear, I shall consider all these facts as mitigating circumstances in fixing a penalty. I shall suspend the license for five days.

Accordingly, it is, on this 9th day of February, 1939,

ORDERED that Plenary Retail Distribution License No. D-2, heretofore issued to Adolph Held by the Township Committee of the Township of Deptford, be and same is hereby suspended for a period of five (5) days.

Pursuant to notice of December 17, 1938, Bulletin 289, Item 1, the effective date of such suspension is reserved for future determination.

D. FREDERICK BURNETT,
 Commissioner.

12. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against)

FRANCES GEISLER, Crown Point Road and Delaware St., West Deptford Township, P. O. Thorofare, New Jersey,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License No. D-1, issued by the Township Committee of the Township of West Deptford.)

Frances Geisler, Pro Se. Samuel B. Helfand, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charge was served upon the licensee alleging that, on December 16, 1938, she sold a quart bottle of Kessler's Private Blend Whiskey below the minimum retail price, in violation of State Regulations No. 30.

Licensee admitted that she sold the item in question to Investigator Roberts, of this Department, at \$1.85, although the minimum Fair Trade price is \$1.95. Licensee testified that she had changed her price tags at the time she received the price pamphlet; that, thereafter, her premises were remodeled and new shelves installed; that, after the bottles were replaced on the shelf, she and her son had worked until nearly midnight on December 15th putting price tags on and checking prices; that, to the best of her knowledge, the quart bottle of Kessler's was the only item that wasn't priced right, and that this was due to the fact that they either put the quart bottle of Kessler's in the wrong place or the tag fell off.

These are mitigating circumstances and, in view of the licensee's clear record, I shall consider these facts in fixing a penalty. Her license will be suspended for five days.

Accordingly, it is on this 9th day of February, 1939,

ORDERED that Plenary Retail Distribution License No. D-1, heretofore issued to Frances Geisler by the Township Committee of the Township of West Deptford, be and same is hereby suspended for a period of five (5) days.

Pursuant to notice of December 17, 1938, Bulletin 289, Item 1, the effective date of such suspension is reserved for future determination.

D. FREDERICK BURNETT, Commissioner.

13. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against
 RALPH J. NAPP,
 361 Jackson Ave.,
 Jersey City, N. J.,
 Holder of Plenary Retail Consumption License C-302, issued by the Board of Commissioners of the City of Jersey City.

CONCLUSIONS AND ORDER

Richard E. Silberman, Esq., Attorney for the State Department of Alcoholic Beverage Control.
 Defendant-licensee, Pro Se.

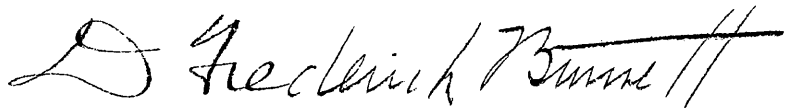
BY THE COMMISSIONER:

The defendant pleaded guilty to the charge of selling to an investigator of this Department, on January 12, 1939, a pint bottle of Calvert's "Special" Blended Whiskey (whose Fair Trade price was \$1.16) for \$1.00, in violation of Rule 6 of State Regulations No. 30.

Although the sale was made by the defendant's bartender (who is also his brother) and not by the defendant himself, this fact in no way relieves him of responsibility for the sale. A licensee is strictly accountable for violations committed by his employees on the licensed premises. Re Conte, Bulletin 293, Item 13.

The defendant's license will be suspended for ten (10) days.

Accordingly, it is on this 9th day of February, 1939, ORDERED that Plenary Retail Consumption License C-302, heretofore issued to Ralph J. Napp by the Board of Commissioners of the City of Jersey City, be and the same is hereby suspended for a period of ten (10) days. Pursuant to notice of December 17, 1938, Bulletin 289, Item 1, the effective date of such suspension is reserved for future determination.



Commissioner.