

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

BULLETIN 517

JUNE 23, 1942.

DISCIPLINARY PROCEEDINGS - SALES BY CLUB LICENSEE DURING PROHIBITED HOURS - SECOND SIMILAR OFFENSE - 30 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against )

CAMDEN FOURTH WARD )  
DEMOCRATIC CLUB, )  
431 Broadway, )  
Camden, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Club License CB-37 )  
issued by the Municipal Board )  
of Alcoholic Beverage Control )  
of the City of Camden. )  
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Joseph Yacovelli, President, Camden Fourth Ward Democratic Club.  
G. George Addonizio, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant, holder of a club license in Camden, entered a plea of guilty to the charge of selling alcoholic beverages on its licensed premises on Sunday, February 22, 1942, in violation of a Camden ordinance adopted December 27, 1934 which prohibits the sale of alcoholic beverages between 2:00 A. M. Sunday and 7:00 A.M. the following Monday.

The facts are that on Sunday, February 22, 1942, two investigators of this Department had the licensed premises under surveillance. They observed men gaining admission to the licensed premises by key and by ringing a bell. When the investigators finally gained admission themselves they found eight men drinking at the bar.

In line with my recently enunciated policy as to sale of alcoholic beverages by a club licensee during forbidden hours, I would, if this were the defendant's first offense, suspend its license for fifteen days. See Eighth Ward Progressive Republican Club, Bulletin 514, Item 4. Since actually this is the defendant's second conviction for an offense of this nature (the Camden Board of Alcoholic Beverage Control having suspended the defendant's license in 1940 for such a violation), penalty for the present offense will be stepped up to full thirty days, less five days for the plea, leaving a net of twenty-five days.

The next time will be strike three and the defendant will be "out", with its license revoked and not merely suspended. See Re Calabrese, Bulletin 475, Item 1.

Since there are not sufficient days left in the current licensing year (which ends June 30) for the twenty-five day suspension to be served, I shall suspend the defendant's present license for the balance of its term and shall direct that no further license be issued to the defendant or for the premises in question until a full period of twenty-five days has elapsed.

Accordingly, it is, on this 11th day of June, 1942,

ORDERED, that Club License CB-37, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Camden Fourth Ward Democratic Club for 431 Broadway, Camden, be and the same is hereby suspended for the balance of its term, effective June 16, 1942, at 2:00 A.M.; and it is further

ORDERED, that no further license be issued to this licensee or for the premises in question prior to July 11, 1942.

ALFRED E. DRISCOLL,  
Commissioner.

2. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN PROOF, ACID AND SOLID CONTENT - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against )

SOPHIE PROTZMAN KURIAN, )  
530 and rear 532 Lalor Street, )  
Trenton, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-248, issued by the Board of Commissioners of the City of Trenton. )  
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Sophie Protzman Kurian, Pro Se.  
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleaded not guilty to the following charges:

"1. On or about March 30, 1942, you possessed an illicit alcoholic beverage in that one quart bottle labeled 'Carstairs White Seal Blended Whiskey 86.8 proof' found in your licensed premises contained an alcoholic beverage which varied from a genuine sample similarly labeled used for comparative purposes in proof, solid and acid content, in violation of R. S. 33:1-50.

"2. On or about the date aforesaid and prior thereto, you, not being the holder of a New Jersey brewery, distillery, winery or rectifier's license, bottled an alcoholic beverage for sale and resale in that you refilled one quart bottle labeled 'Carstairs White Seal Blended Whiskey 86.8 proof' with other whiskey, in violation of R. S. 33:1-78."

On March 30, 1942 investigators of this Department examined nineteen opened bottles on the licensed premises and seized one quart bottle labeled "Carstairs White Seal Blended Whiskey 86.8 Proof" because their field test led them to believe that the contents thereof were not genuine as labeled. They also obtained an unopened bottle of the same product for comparative purposes.

Analysis made by the chemist employed by this Department disclosed that the contents of the seized bottle tested as follows:

Proof - 84.9°  
Acids - 25.2 grams per 100 liters  
Solids- 137.6 grams per 100 liters

The contents of the genuine unopened bottle which was taken at the same time tested as follows:

Proof - 86.8°  
Acids - 27.6 grams per 100 liters  
Solids - 144 grams per 100 liters

The chemist also certified that he had previously tested five original sealed bottles of this product and had never found any to contain less than 144 grams per 100 liters of solid content or less than 26 grams per 100 liters of acid content.

It thus appears that the contents of the seized bottle were substantially lower in proof, acids and solids than the contents of genuine samples.

Licensee and her daughter-in-law, who is employed on the premises, testified that they had never tampered with the contents of the seized bottle. They also testified that two extra bartenders are employed on the licensed premises on Friday and Saturday nights but that they had no reason to suspect that either bartender had refilled the seized bottle. Despite personal innocence, however, the licensee must be held strictly responsible for any "refills" found in her stock of liquor. Re Agostino, Bulletin 506, Item 8. Hence I find the licensee guilty as charged. Since both charges arose out of the same set of circumstances, but one penalty will be imposed. Re Cutter, Bulletin 479, Item 12.

Licensee has been in business for many years. Her record is otherwise clear. No aggravating circumstances appear, and, in the absence thereof, I shall suspend the license for ten days, which is the minimum penalty in cases of this kind.

Accordingly, it is, on this 12th day of June, 1942,

ORDERED, that Plenary Retail Consumption License C-248, issued to Sophie Protzman Kurian for premises 530 and rear 532 Lalor Street, Trenton, by the Board of Commissioners of the City of Trenton, be and the same is hereby suspended for a period of ten (10) days, commencing June 16, 1942, at 2:00 A.M. and terminating June 26, 1942, at 2:00 A. M.

ALFRED E. DRISCOLL,  
Commissioner.

3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA - HEREIN OF THE POWER AND POLICY WITH RESPECT TO THE SUSPENSION OF MERELY THE PACKAGE GOODS PRIVILEGE OF A PLENARY RETAIL CONSUMPTION LICENSE.

In the Matter of Disciplinary Proceedings against

GRANT LUNCH CORPORATION, 197-199-201 Market St. and 6-8 Beaver Street, Newark, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-57, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Kasen, Schnitzer & Kasen, Esqs., by Daniel G. Kasen, Esq., Attorneys for Licensee. Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee was charged with selling a half-gallon bottle of Hiram Walker "93" Rye Whiskey (Two Years Old) below the minimum consumer price then in effect, in violation of the Fair Trade regulations.

The licensee, while it did not enter a formal plea to the charges, freely admitted, by written stipulation of facts, that it sold the item for \$3.19 when the minimum Fair Trade price was \$3.29. It explains the reason for the sale in violation of the Fair Trade Regulations by setting forth in some detail its method of keeping records and the precautions taken to avoid violations of the alcoholic beverage regulations.

It appears from the stipulation that the violation might well not have occurred if the licensee had had the item in question on hand when the Fair Trade bulletin, effectuating a change in its price, was received by the licensee. It further appears that the store manager was not notified by the clerk in charge of the stock records when the item in question was delivered to the licensed premises or that it was to be sold at a price different from that established by a prior Fair Trade bulletin. It is represented that since the violation occurred, the licensee has changed its system to avoid a recurrence of the "error."

Notwithstanding the precautions taken by the licensee to assure its compliance with the Fair Trade Regulations and notwithstanding that the violation may well have been lacking in deliberation, the fact remains that the sale was made in violation of the Fair Trade Regulations.

The Fair Trade Regulations were promulgated pursuant to P. L. 1938, c. 208, which declared the legislative policy in opposition to sale of alcoholic beverages at prices less than those established by Fair Trade contracts. The regulations and the law must be

obeyed. The licensee is responsible for the acts of its agents and servants and their carelessness is not an excuse for a violation of the law. However, in view of the frank admission of the facts, which is tantamount to a plea of guilt, and in the absence of anything in the record showing the violation to have been wilful or deliberate, I shall suspend the license for the minimum period of ten days, less five for the guilty plea.

The licensee operates a cafeteria and restaurant at the licensed premises and under its plenary retail consumption license operates bars at which alcoholic beverages are dispensed for on-premises consumption and maintains a department in which package goods are sold exclusively. The licensee urges that any suspension imposed affect only the privilege of selling alcoholic beverages in original containers for off-premises consumption, apparently because the violation occurred in the package department rather than at one of the bars.

Since the power to suspend the license and the totality of the licensed privilege is conferred by R.S. 33:1-31, I am convinced that this Department has the power to suspend one or more of the component licensed privileges comprising that totality. Cf. Schnizler v. Yellowley, 290 Fed. 849 (D.C.N.Y. 1933). However, as a matter of policy, I cannot concede that the suspension should affect merely a portion of the licensed privilege because of the resulting difficulties of administration and enforcement of the Alcoholic Beverage Law. Furthermore, to accede to the licensee's request would be to recognize the separate character of the package department and the bar - a condition vigorously denied by the licensee when it was respondent in the appeal case of Novelty Bar, Inc. v. Newark and Grant Lunch Corporation, Bulletin 418, Item 9, where the respondent-licensee prevailed in its contention that the licensed premises constituted a single place of business.

The licensee cannot blow hot and cold and contend that it conducts a unified business when it seeks to enlarge its licensed premises and subsequently contend that it conducts two separate businesses when its license is about to be suspended. If it takes advantage of the law and insists on conducting under a plenary retail consumption license a package business substantially, but not technically, separated from its bar business, it should anticipate that any suspension of the license may affect the entire licensed privilege.

Accordingly, it is, on this 12th day of June, 1942,

ORDERED, that Plenary Retail Consumption License C-57, heretofore issued to Grant Lunch Corporation by the Municipal Board of Alcoholic Beverage Control of the City of Newark for premises 197-199-201 Market Street and 6-8 Beaver Street, Newark, be and the same is hereby suspended for a period of five (5) days commencing June 22, 1942, at 2:45 A.M. and terminating June 27, 1942, at 2:45 A. M.

ALFRED E. DRISCOLL,  
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against  
 HOME WINE AND LIQUOR CO., INC.,  
 38 Market Street,  
 Passaic, N. J.,  
 Holder of Plenary Retail Distribution License D-6 issued by the Board of Commissioners of the City of Passaic.

CONCLUSIONS AND ORDER

Lester J. Morris, Esq., Attorney for Licensee.  
 Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded guilty to a charge of selling one pint of Old Overholt Pennsylvania Straight Rye Whiskey below the Fair Trade price, in violation of Rule 6 of State Regulations No. 30

On April 22, 1942, the date of the sale, the minimum consumer price for the item in question was \$1.69. See Bulletin 480. The investigators' reports show that one of them entered the licensed premises and discussed with Moses Morris, an employee, the purchase of a bottle of wine. Then, and apparently without any discussion of the price thereof, the investigator asked for a pint of Old Overholt. Moses produced the latter item, rang up \$1.60 on the cash register and gave the investigator forty cents change from the sum of \$2.00 which he had received. The other investigator entered the store, and in the presence of both, Morris stated three times that he had given the correct change, namely, forty cents. After the investigators had disclosed their identity and told him the correct price of Old Overholt, Morris stated that he had made a mistake because of the previous discussion of the purchase of the wine. The evidence is not sufficient to show that the violation was deliberate and made with intent to "chisel" on the price of the item in question. I shall impose the minimum penalty of ten days, less five days for the guilty plea.

Accordingly, it is, on this 16th day of June, 1942,

ORDERED, that Plenary Retail Distribution License D-6, issued to Home Wine and Liquor Co., Inc. for premises 38 Market St., Passaic, N. J. by the Board of Commissioners of the City of Passaic, be and the same is hereby suspended for a period of five (5) days, commencing at 3:00 A. M. on June 22, 1942 and concluding at 3:00 A.M. on June 27, 1942.

ALFRED E. DRISCOLL,  
 Commissioner.

5. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING THE INTEREST OF OTHERS - AIDING AND ABETTING NON-LICENSEES (UNDISCLOSED PERSONS FULLY QUALIFIED) TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - SITUATION NOT CORRECTED - LICENSE SUSPENDED FOR BALANCE OF TERM.

In the Matter of Disciplinary Proceedings against HARRY COHEN, T/a TWIN LAKES INN, State Highway Route #48, Millville Road, Hamilton Township, Atlantic County, P. O. Mays Landing, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-19 issued by the Township Committee of the Township of Hamilton.

Harry Cohen, Defendant-Licensee, John Kleckner and William Bater, 2d, all pro se. G. George Addonizio, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee was served with charges alleging that (1) he falsified his license application by denying that anyone other than himself was interested in his license or the business conducted thereunder, whereas John Kleckner and William Bater, 2d, had such interest, in violation of R. S. 33:1-25; and (2) he permitted the said John Kleckner and William Bater, 2d to exercise the privileges of his license contrary to R. S. 33:1-26, in violation of R. S. 33:1-52.

The facts are not in dispute. It appears that the three persons involved, all of whom are in the real estate business, decided, in December 1941, to purchase the tavern in question. In accordance with what the three men alleged to be the usual custom employed by real estate men when jointly purchasing a business, the license was placed in only one name, the other two remaining undisclosed. It is apparent from the testimony that there was no deliberate intent to violate the Alcoholic Beverage Law, since both Kleckner and Bater appear fully qualified to hold liquor licenses in their own names.

However, ignorance of the law is no excuse for the concealment of the interests of Kleckner and Bater in the license. The licensee is guilty as charged.

At the hearing, licensee represented that the application for the license for the next fiscal year, commencing July 1, 1942, would be made in all three names. If this is done, the situation will be properly corrected. Since, however, the business cannot continue to be operated in only the one name, I shall suspend the license for the balance of the term. The effective date of the suspension will be fixed as June 21, 1942, or the equivalent of a ten day suspension of the license, which is the usual penalty for this type of violation. Cf. Re DeSimone, Bulletin 501, Item 5; Re Oasis Tavern of Asbury Park, Inc., Bulletin 506, Item 7; Re Dino, Bulletin 507, Item 8. In addition, I shall caution the local issuing authority to

make certain that the license for the 1942-43 fiscal year is issued in the names of all three persons involved herein.

Accordingly, it is, on this 18th day of June, 1942,

ORDERED, that Plenary Retail Consumption License C-19, heretofore issued to Harry Cohen, t/a Twin Lakes Inn, by the Township Committee of the Township of Hamilton, for premises State Highway Route #48, Millville Road, Hamilton Township, Atlantic County, P. O. Mays Landing, N. J., be and the same is hereby suspended for the balance of its term, effective June 21, 1942, at 4:00 A. M.

ALFRED E. DRISCOLL,  
Commissioner.

6. DISCIPLINARY PROCEEDINGS - APPLICATION TO SPLIT SUSPENSION DENIED -  
HEREIN OF THE DEPARTMENT POLICY WITH RESPECT TO SPLITTING A SUSPEN-  
SION INTO TWO SEPARATE PERIODS.

June 18, 1942

Hoboken Wine & Liquor Co., Inc.,  
Hoboken, N. J.

Gentlemen:

I have before me your letter of June 16th calling my attention to the fact that Sunday, June 21st, is Father's Day.

On May 27, 1942 your license was suspended for a period of twenty days commencing June 1st, at 2:00 A.M. and concluding June 21st, at 3:00 A.M. (Bulletin 514, Item 1).

In view of the celebration of Father's Day on the 21st, you now ask for permission to open your store on Friday and Saturday, June 19th and 20th.

I can readily understand your interest in the thirsty fathers of Hoboken. Nonetheless, I cannot grant the permission you seek. The fact that your store must remain closed immediately prior to Father's Day is, from your point of view perhaps, unfortunate. Sound policy, however, does not warrant splitting a suspension into separate periods. The purpose of the suspension is to punish the licensee who has been found guilty of violating the law. Therefore, if the suspension is served only during those periods when it is not likely to hurt the licensee, it will not serve as a deterrent to future violations.

While I am touched by your plea for father, perhaps without your spirits he will have more spirit with which to celebrate the day

Very truly yours,  
ALFRED E. DRISCOLL,  
Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - DELIBERATE VIOLATION - SECOND SIMILAR OFFENSE - 25 DAYS' SUSPENSION WITH NO REMISSION FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against )

HARRY SCHIFFMAN, T/a CORK AND BOTTLE, 605 Central Ave., East Orange, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-11 issued by the Municipal Board of Alcoholic Beverage Control of the City of East Orange. )

Philip Singer, Esq., Attorney for Defendant-Licensee. Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleads guilty to the charge that liquor was sold in his store below the established Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

The facts are that, on December 30, 1941, an investigator of this Department visited the defendant's store and there purchased, from Thomas H. Hall, then a clerk at the store, six fifths of White Horse Scotch for \$20.40 (5% under the then existing Fair Trade price) and six quarts of Wilson "That's All" Whiskey for \$16.50 (8-1/3% under the Fair Trade price). See Bulletin 483.

The defendant advances the claim that the violation was actually unwitting; that Hall believed, albeit erroneously, that the discounts in question were permissible because he was selling the equivalent of a case lot.

I cannot accept this claim of mistake. At time of the sale in question, the Fair Trade prices for White Horse Scotch and Wilson's Whiskey were listed in Bulletin 483 under the general heading of Browne Vintners Co., Inc. Such listing specifically showed, beyond any reasonable possibility of misunderstanding, that a case lot discount (up to 10%) could be given only on case lot sales of Wilson's. Also see Re City Hall Delicatessen, Bulletin 277, Item 5.

Moreover, the testimony of the investigator who made the purchase (as corroborated by the fellow agent who accompanied him) amply shows that Hall undercut the Fair Trade price even before knowing that the investigator was going to buy as much as twelve bottles. From such testimony, it thus appears that the investigator first asked Hall for the price of White Horse Scotch and was quoted \$3.59 per bottle - the Fair Trade price; that, when he said he wanted six bottles, Hall stated he could then have them at \$3.40 per bottle; that, after this transaction was concluded, the investigator asked for the price of Wilson Whiskey and was quoted \$3.00 per bottle - the Fair Trade price; that here again, when he said he wanted six, Hall stated he could have them at \$2.75 apiece.

The only proper inference in the case is that Hall, on learning that a quantity purchase was being made, knowingly and deliberately sold below the Fair Trade price.

The fact that this sale was by an employee in no way exculpates the defendant. For, even overlooking the ready suspicion that Hall, as a clerk, sold at prices or discounts which the "boss" authorized, it is well settled that a licensee is strictly accountable for the violations of his employees. See Re Wallack, Bulletin 494, Item 2; Re Cohen, Bulletin 495, Item 6.

This is the defendant's second conviction for a Fair Trade violation at this store, his license having been suspended by this Department in December 1940 for his first offense. See Re Schiffman, Bulletin 434, Item 4. In line with my present policy in the instance of a second and deliberate Fair Trade violation, the defendant's license will, for the present offense, be suspended for twenty-five days. Because of the defendant's attempt to sell me a "cock and bull" story on the question whether this violation was innocent, nothing will be remitted for the guilty plea. See Re Springfield Wine & Liquor Co., Bulletin 516, Item 9.

Since there are not sufficient days left in the current licensing year (which ends June 30th) for the twenty-five day suspension to be served, I shall suspend the defendant's present license for the balance of its term and shall direct that any license issued to the defendant, or anyone else, for the premises in question for 1942-3 be under suspension until the full period of twenty-five days has elapsed.

Accordingly, it is, on this 16th day of June, 1942,

ORDERED, that Plenary Retail Distribution License D-11, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of East Orange to Harry Schiffman, t/a Cork and Bottle, for 605 Central Avenue, East Orange, be and the same is hereby suspended for the balance of its term, effective June 18, 1942, at 2:00 A.M.; and it is further

ORDERED, that if any license be issued to this licensee, or other person, for the premises in question for the 1942-3 fiscal year, such license shall be under suspension until 6:00 A.M. July 13, 1942.

ALFRED E. DRISCOLL,  
Commissioner.

8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - DELIBERATE VIOLATION - PREVIOUS RECORD - 20 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against ALEX LUKASZEWICH, 427-429 Avenue C, Bayonne, N. J., Holder of Plenary Retail Consumption License C-154 issued by the Board of Commissioners of the City of Bayonne.

CONCLUSIONS AND ORDER

Alex Lukaszewich, Pro Se. Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded guilty to a charge alleging that on April 17, 1942 he sold a quart bottle of Carstairs White Seal Blended Whiskey below the established minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

The plea includes an admission that the defendant was fully aware, when making the sale, that the Fair Trade price was higher than that charged for the product in question.

The Department records disclose that the defendant has a previous record. In June 1940 his license was suspended by the local issuing authority for five days for selling alcoholic beverages during prohibited hours on a Sunday morning.

Because of such record, the usual fifteen day penalty for the violation herein, with remission of five days for the guilty plea, will be increased by five days, making a total penalty of fifteen days.

Accordingly, it is, on this 18th day of June, 1942,

ORDERED, that Plenary Retail Consumption License C-154, heretofore issued to Alex Lukaszewich by the Board of Commissioners of the City of Bayonne for premises 427-429 Avenue C, Bayonne, be and the same is hereby suspended for the balance of its term, effective June 22, 1942, at 3:00 A.M.; and it is further

ORDERED, that any further license issued for the 1942-43 fiscal year for the premises in question to this licensee, or any other person, shall be subject to the suspension herein until 7:00 A. M. July 7, 1942.

ALFRED E. DRISCOLL, Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - DELIBERATE VIOLATION - SECOND SIMILAR OFFENSE - 25 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against ACE BEVERAGE CO., INC., 560-564 Perry Street, Trenton, N. J., Holder of Plenary Retail Distribution License D-17 issued by the Board of Commissioners of the City of Trenton.

CONCLUSIONS AND ORDER.

Anthony Giuliano, Esq. and George Pellettieri, Esq., Attorneys for Defendant-Licensee. G. George Addonizio, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant has pleaded guilty to a charge alleging that, on April 11, 1942, it sold a quart bottle of Carstairs White Seal Blended Whiskey below the established minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

It also admits that such sale was made with knowledge that the price charged was less than the Fair Trade minimum.

Since this is defendant's second Fair Trade violation (see Bulletin 315, Item 2), the penalty herein will be fixed at twenty-five days, less five days for the plea, making a net penalty of twenty days. Re Hoboken Wine & Liquor Co., Inc., Bulletin 514, Item 1.

Accordingly, it is, on this 18th day of June, 1942,

ORDERED, that Plenary Retail Distribution License D-17, heretofore issued to Ace Beverage Co., Inc. by the Board of Commissioners of the City of Trenton, for premises 560-564 Perry Street, Trenton, be and the same is hereby suspended for the balance of its term, effective June 22, 1942, at 2:00 A.M.; and it is further

ORDERED, that any further license issued for the 1942-43 fiscal year for the premises in question to this licensee, or any other person, shall be subject to the suspension herein until 7:00 A. M. July 12, 1942.

ALFRED E. DRISCOLL, Commissioner.

10. ELIGIBILITY - OPERATION OF ILLICIT STILL SINCE REPEAL INVOLVES MORAL TURPITUDE - APPLICANT DECLARED INELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

June 17, 1942

Re: Case No. 437

Applicant seeks determination of whether the crime of operating an illicit still involves moral turpitude, thus disqualifying him from holding a liquor license or being employed by a liquor licensee in this State. See R. S. 33:1-25, 26.

At the hearing, the applicant testified that he was convicted of operating an illicit still in 1935 and in 1936 for not registering a still.

Fingerprint records disclose the applicant's statements to be substantially true. However, the records show that although arrested in 1935 he was actually not convicted of the crime until 1940.

It was ruled in Re Case No. 267, Bulletin 313, Item 1, that activities in illicit liquor since Repeal constitute moral turpitude within the meaning of the Alcoholic Beverage Law.

It is recommended that the applicant be advised that he is ineligible for employment by any New Jersey liquor licensee.

Herbert F. Myers, Jr.,  
Legal Assistant.

APPROVED:  
ALFRED E. DRISCOLL,  
Commissioner.

11. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENT IN LICENSE APPLICATION - FAILURE TO DISCLOSE MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - LICENSE SUSPENDED FOR BALANCE OF TERM.

In the Matter of Disciplinary Proceedings against  
K AND D BAR & GRILL, INC.,  
86 Garden Street,  
Hoboken, N. J.,  
Holder of Plenary Retail Consumption License C-87 issued by the Board of Commissioners of the City of Hoboken.

CONCLUSIONS  
AND ORDER

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James S. Brown, Esq., Attorney for Defendant-Licensee.  
G. George Addonizio, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleads guilty to charges alleging that (1) it falsified its license applications by failing to disclose therein that Walter Rogers was the real and beneficial owner of the license and business conducted thereunder, in violation of R. S. 33:1-25; and (2) it permitted the said Walter Rogers to exercise the privileges of its license contrary to R. S. 33:1-26, in violation of R. S. 33:1-52.

It appears that Walter Rogers, resident of this State only since July 1941 and therefore ineligible to hold more than 10% of the corporate stock of this licensee (see R. S. 33:1-12.1 and 33:1-25), actually owned all of such corporate stock. On the books of the corporation, however, Rogers nominally held only one of twenty-five shares issued, the remaining twenty-four shares being issued in the names of persons who were holding the stock for him.

Since the hearing, a prospective purchaser has been obtained for the business, and I am informed that such purchaser intends to apply for a new license for the premises in question for the fiscal year 1942-43, there being no quota fixed for consumption licenses in the City of Hoboken. Under the circumstances, I shall suspend the present license for the balance of the term, effective as of June 21, 1942. This will result in a suspension of the license for ten days, which is the penalty usually meted out for violations of the kind herein involved. Cf. Re Italian Kitchens, Inc., Bulletin 513, Item 4 and cases therein cited.

Accordingly, it is, on this 18th day of June, 1942,

ORDERED, that Plenary Retail Consumption License C-87, heretofore issued to K and D Bar & Grill, Inc. by the Board of Commissioners of the City of Hoboken for premises 86 Garden Street, Hoboken, N. J., be and the same is hereby suspended for the balance of its term, effective June 21, 1942, at 3:00 A. M.

ALFRED E. DRISCOLL,  
Commissioner.

12. DISCIPLINARY PROCEEDINGS - CHARGE THAT LICENSEE SOLD BELOW FAIR TRADE MINIMUM DISMISSED.

In the Matter of Disciplinary Proceedings against )

JOSEPH POLISANO, )  
T/a SEASHORE LIQUOR STORE, )  
2329-2331 Atlantic Avenue, )  
Atlantic City, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Distribution License D-15 issued by the Board of Commissioners of the City of Atlantic City. )  
----- )

Joseph Polisano, Pro Se.  
William F. Wood, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleads not guilty to the charge of having sold a quart bottle of Mount Vernon Brand Maryland Straight Rye Whiskey at his store below the established Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

It appears that on March 28, 1942 a customer, apparently in a hurry, entered the licensed premises, purchased a quart bottle of Mount Vernon Whiskey from the licensee's clerk, took it unwrapped, laid down \$3.75, mostly in change, on the counter, and hurried off. The Fair Trade price of the liquor was then \$3.45. Upon counting the money and finding that he was overpaid, the clerk called to the customer before he left the store and gave him back two quarters. The clerk claims that he did this by mistake; that he intended to return a quarter and a nickel; that when he again counted the money preparatory to depositing it in the register and found that he had short-changed himself, he again called to the customer, who had by this time left the store and did not respond.

The investigators found that the cash register tape showed the amount of the sale to be \$3.25. The licensee explained that since this was the amount of cash actually on hand, it was the amount registered, and the customer was held responsible for the balance.

This, in substance, is the story that both the customer and the clerk told the investigators within a few minutes after the incident, and which was repeated under oath at the hearing.

It thus appears that the licensee, having at the outset received too much, ended by keeping less than the Fair Trade price. Such a transaction is subject to careful scrutiny, and normally, alibis are not accepted as an excuse.

Here, however, the testimony is convincing that what, on the surface, appeared to be a violation, actually was merely an error in making change and not a subterfuge to evade the Fair Trade regulation. Under the peculiar circumstances of this case, it would be unfair to consider it a sale in violation of such regulation. Cf. Re Goldberg, Bulletin 387, Item 2, where the licensee made an error in arithmetic.

The charge is therefore dismissed.

ALFRED E. DRISCOLL,  
Commissioner.

Dated: June 18, 1942.

13. APPELLATE DECISIONS - HAWKE v. PALMYRA.

CHARLES L. HAWKE, )  
Appellant, )  
-vs- )  
MAYOR AND BOROUGH COUNCIL OF )  
THE BOROUGH OF PALMYRA, )  
Respondent. )  
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ON APPEAL  
CONCLUSIONS AND ORDER

Worth and Worth, Esqs., by Herbert L. Worth, Esq., Attorneys  
for Appellant.

Albert McCay, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

On May 21, 1942 appellant herein appeared before respondent and pleaded non vult to charges alleging that, on April 28, 1942, he was intoxicated and discharged two revolvers while he was present on his licensed premises. Respondent thereupon suspended appellant's license C-1 for premises at 5 and 7 West Broad Street, Palmyra, for the balance of the present fiscal year. The suspension became effective May 23, 1942. On the filing of this appeal a stay was denied.

While this appeal was pending, application was duly made to respondent to transfer the license to Ernest Mitchell, Jr. The application was granted. On June 16, 1942 respondent adopted a resolution which recites the suspension, appeal and transfer, and concludes as follows:

"Therefore be it resolved, that the penalty be and hereby is reduced to a suspension of said license from May 23, 1942 to June 18, 1942 inclusive, subject, however, to the approval of the Commissioner of Alcoholic Beverage Control."

Attorneys for both parties herein have advised me that appellant does not intend to prosecute the appeal.

Under the circumstances, I shall affirm the finding of guilt, and shall approve the reduction of the penalty. Cf. Aleksiak v. Perth Amboy, Bulletin 404, Item 9.

Accordingly, it is, on this 18th day of June, 1942,

ORDERED, that the action of respondent in finding the licensee guilty is affirmed; and it is further

ORDERED, that the penalty heretofore imposed be and the same is hereby modified so as to begin on May 23, 1942 and to terminate at the opening hour for business on June 19, 1942.

*Alfred E. Griswell*  
Commissioner.

*as*