

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

BULLETIN 632

August 24, 1944.

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THE UNITED STATES OF AMERICA  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
WASHINGTON, D. C. 20250

FOR THE PURPOSES OF THE NATIONAL ANTIMONY ACT, THE  
FOLLOWING INFORMATION IS HEREBY MADE PUBLIC:  
NAME OF THE COMPANY OR INDIVIDUAL: [Illegible]  
ADDRESS: [Illegible]

DATE OF THE REPORT: [Illegible]  
NAME OF THE REPORTING OFFICER: [Illegible]  
TITLE OF THE REPORTING OFFICER: [Illegible]

NAME OF THE COMPANY OR INDIVIDUAL: [Illegible]  
ADDRESS: [Illegible]

DATE OF THE REPORT: [Illegible]  
NAME OF THE REPORTING OFFICER: [Illegible]  
TITLE OF THE REPORTING OFFICER: [Illegible]

NAME OF THE COMPANY OR INDIVIDUAL: [Illegible]  
ADDRESS: [Illegible]

DATE OF THE REPORT: [Illegible]  
NAME OF THE REPORTING OFFICER: [Illegible]  
TITLE OF THE REPORTING OFFICER: [Illegible]

NAME OF THE COMPANY OR INDIVIDUAL: [Illegible]  
ADDRESS: [Illegible]

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

BULLETIN 632

AUGUST 24, 1944.

1. APPELLATE DECISIONS - KACENBERGS v. HOBOKEN.

MARTHA KACENBERGS, )  
T/a THREE STAR TAVERN, )  
 )  
Appellant, )  
 )  
-vs- )  
 )  
BOARD OF COMMISSIONERS OF THE )  
CITY OF HOBOKEN, )  
 )  
Respondent )  
----- )

ON APPEAL  
CONCLUSIONS AND ORDER

Anthony LaPorta, Esq., Attorney for Appellant.  
John J. Fallon, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the revocation of appellant's plenary retail consumption license by the Board of Commissioners of the City of Hoboken. A petition for a stay of the revocation was denied and appellant's place of business has been closed since July 5, 1944.

Appellant was found guilty by respondent of the following offenses:

"1. That you did on divers days and dates, for a period beginning about April 1, 1944 and up to and including June 26, 1944, allow, permit and suffer females employed on the licensed premises to accept alcoholic beverages at the expense of or as a gift from a customer or patron, contrary to Rule 22 of Regulations 20 of the Department of Alcoholic Beverage Control.

"2. That you did on divers days and dates for a period beginning about April 1, 1944 and up to and including June 26, 1944, serve to purchasers alcoholic beverages other than that ordered, contrary to and in violation of Rule 4 of Regulations 22 of the Department of Alcoholic Beverage Control.

"3. That you did on divers days and dates, for a period beginning about April 1, 1944 and up to and including June 26, 1944, violate the resolution and regulation of the Board of Commissioners of the City of Hoboken passed December 17, 1935, in that you did allow, permit and suffer in and upon the above mentioned premises, women conversationalists and other persons of ill repute, in that you did permit the assembling of females on the above mentioned licensed premises for the enticing of customers."

Appellant appealed upon the following grounds:

"(1) The evidence submitted at the hearing was insufficient to sustain a conviction on any of the counts, namely: 1, 2 and 3 of the complaint.

"(2) There was no proof that females were employed by the appellant on the licensed premises to accept alcoholic beverages at the expense of the customer as alleged in count 1 of the complaint.

"(3) There was absolutely no proof that the appellant served purchasers alcoholic beverages other than ordered as alleged in count 2 of the complaint.

"(4) There was no resolution and regulation of the Board of Commissioners of the City of Hoboken passed December 17, 1935, which is alleged to have been violated by count 3 of the complaint, offered in evidence and no resolution was shown to exist. Besides, there was no proof that said resolution was published, advertised or circulated so that saloon keepers had either actual or constructive notice of said resolution. There was further no proof of count 3 of the complaint to show that the women alleged to have been employed were women of ill repute and that they were therein employed for enticing of customers as therein alleged.

"(5) Counts 1 and 3 of the complaint are substantially similar as there could not possibly be any offense without the alleged female employees being on the premises and the punishment for both counts is placing the appellant in double jeopardy and punishing her twice for the same alleged offense.

"(6) The alleged 3rd count of the complaint is based upon a resolution of the Board of Commissioners of the City of Hoboken and not by ordinance as required by law and is therefore void.

"(7) The revocation of her license was too severe, harsh, contrary to the facts of the case and was not warranted by law."

Both parties herein agreed to submit this appeal upon the stenographic transcript of the proceedings heard by the issuing authority pursuant to Rule 8 of State Regulations No. 14.

Undisputed testimony of witnesses in the instant case discloses that several persons, including the appellant, were taken into custody by the municipal police on the early morning of June 27, 1944 because of a brawl which occurred on the appellant's licensed premises.

Police Lieutenant William Christie testified that during the investigation to determine the cause of the fracas, information received from two women who had been taken into custody revealed that they were employed by the appellant to solicit drinks from and at the expense of customers. Lieutenant Christie's testimony tended to show that service of a dark colored liquid was made to the women in place of a particular liquor that was ordered on their behalf and that twenty cents of the forty cents charged for each glass of this colored liquid was given to the woman instrumental in effecting the sale. Tabulation of the number of drinks obtained under this arrangement was made on separate pieces of white paper with the names of the particular employees written thereon, drinks to be credited to them being symbolized by an "X" mark. A number of these slips of paper seized by the police were admitted in evidence as a part of the respondent's case.

Anna Magich, a witness for the respondent, testified that for over a period of two months she had solicited drinks pursuant to an understanding with the appellant, the practice being that the appellant would introduce men to her and then suggest that they purchase a drink for her. This witness claimed that several other women were employed at the appellant's tavern for a similar purpose. Anna Magich insisted that regardless of what was ordered for her by her male acquaintance, plain water with a little bitters was served to her; and she identified a bottle as that from which her drinks were poured. She further testified that she would consume the drink very quickly in order to prevent its detection by the person who did the treating.

Another witness, one Ottilda Rutz, testified that she was employed by appellant as the cleaning woman at a stipulated salary, but that in addition thereto she received twenty cents from appellant for each drink purchased for her by a customer while in the licensed premises. She claimed, however, that she was always served with the type of drink she ordered, namely, rum and ginger ale.

Appellant admitted that she gave these women twenty cents for each drink that they were instrumental in having men purchase for them and in explanation therefor stated, "I felt sorry for them." She testified that she always served the kind of drinks that were ordered by the customer for these women. Appellant recognized the bottle seized at the licensed premises and identified its contents as being sarsaparilla and water. The bottle used for this mixture was a standard brand wine bottle. Appellant stated that, when treated to a drink by a customer, she poured from the contents of this bottle which she referred to as "wine" and charged the customer twenty-five cents per drink.

Careful consideration of the facts presented in this appeal substantiates the finding of guilt on the three charges by the respondent herein. The scheme resorted to by appellant was deliberately planned for the purpose of perpetrating a fraud on persons who patronized her place of business. Appellant's actions in the operation of the liquor establishment, as admitted by herself, displayed an utter disregard of the State regulation prohibiting hostesses and the municipal regulation which, in the language of Justice Collins, "is a wise one, namely, the debarring of women from forming part of the allurements of drinking places" (see Hoboken v. Goodman, 68 N. J. L. 217, 222; Sup. Ct. 1902).

On December 17, 1935 the Board of Commissioners of the City of Hoboken adopted a resolution which provides as follows:

"No licensee shall allow, permit or suffer in or upon the licensed premises any known criminals, gangsters, racketeers, pick-pockets, swindlers, confidence men, prostitutes, female impersonators, women conversationalists or other persons of ill repute, nor permit the assembling of females in the licensed premises for the enticing of customers or making assignations for improper purposes."

Although adopted in the form of a resolution, the quoted regulation is in full force and effect. Chapter 234 of the Laws of 1939 (effective July 18, 1939) provides that municipal alcoholic beverage regulations may, after July 18, 1939, be adopted only by ordinance with the proviso, however, that all such regulations theretofore adopted, whether by ordinance or resolution, shall continue in full force and effect until repealed, amended or otherwise altered or changed by ordinance.

As already noted, appellant contends that charges (1) and (3) are substantially similar and, if the appellant be guilty, it should constitute but one violation.

In Blockburger v. United States, 284 U. S. 299, Mr. Justice Sutherland, speaking for the Supreme Court of the United States, said:

"The applicable rule is that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of an additional fact which the other does not. Gavieres v. United States, 220 U. S. 338, 342, 55 L. ed. 489, 490, 31 S. Ct. 421, and authorities cited. In that case this court quoted from and adopted the language of the Supreme Court of Massachusetts in Morey v. Com. 108 Mass. 433: 'A single act may be an offense against two statutes; and if each statute requires proof of an additional fact which the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution and punishment under the other.' Compare Albrecht v. United States, 273 U. S. 1, 11, 12, 71 L. ed. 505, 510, 511, 47 S. Ct. 250, and cases there cited."

Assembling of females in the licensed premises for the enticing of customers constitutes a violation of the local regulation, whereas, to constitute a violation of Rule 22 of State Regulations No. 20, the person accepting food or beverages from customers must be employed on the licensed premises. Inasmuch as proof of a different element is required for each of these violations, I must conclude that two offenses were committed although both the local and the State regulation were violated by one act.

Under all the circumstances, I conclude that the respondent's revocation of the license was fully warranted. The respondent has, in recent years, adopted a policy of revoking the licenses of those found guilty of violating the regulation referred to in charge 3. Van Den Kooy v. Hoboken, Bulletin 618, Item 11. In addition, appellant herein perpetrated a fraud by charging patrons for liquor which was not served. The action of respondent revoking appellant's license is affirmed.

Accordingly, it is, on this 14th day of August, 1944,

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

ALFRED E. DRISCOLL  
Commissioner.

## 2. RULES GOVERNING SIGNS AND OTHER ADVERTISING MATTER.

HEREIN RESTATEMENT CONCERNING PROHIBITED SIGNS AND ADVERTISING MATTER DISPLAYED ON ANY DOOR OR WINDOW, IN SHOW WINDOWS, OR IN INTERIOR WHEN VISIBLE FROM THE STREET, OR ON THE EXTERIOR, OF RETAIL LICENSED PREMISES.

FACSIMILE OF SIGNS OR ADVERTISING MATTER OTHER THAN AS EXPRESSLY PERMITTED BY REGULATIONS NO. 21 SHOULD BE SUBMITTED FOR RULING.

August 17, 1944

Anna Satinover  
T/a Herman's Bar  
Atlantic City, N. J.

Dear Madam:

I understand that you desire information concerning (1) the advertising of the price of alcoholic beverages being sold for on-premises consumption in windows, and (2) what "descriptive selling language" is permissible with regard to the sale of alcoholic beverages in original containers for off-premises consumption.

With respect to your first question, the advertising of the price of alcoholic beverages being sold for on-premises consumption on the exterior of licensed premises or in the interior thereof when visible from the street, is prohibited. See Re Marconi Spaghetti Place, Inc., Bulletin 176, Item 4. It follows, therefore, that the advertising of the price of whiskey "by the drink" in any window or other place visible from the street is forbidden.

With respect to your second inquiry, I am not at all sure what you contemplate by "descriptive selling language." Rule 2 of Regulations No. 21 concerning equipment, signs and other advertising matter, prohibits, on the exterior of licensed premises, any signs or other advertising matter bearing the name, brand or trade-mark of any manufacturer or wholesaler's of any alcoholic beverage, and Rule 3 prohibits all price advertising by retailers, directly or indirectly, on the exterior of licensed premises or in the show window or door or interior when visible from the street, excepting only by the use of 1-1/2" x 1-1/2" cards advertising the price of alcoholic beverages being sold in original containers for off-premises consumption. Language which indirectly advertises price, even though the price itself is not named, is a violation of the aforesaid rule. See Bulletin 120, Items 1 and 10.

In addition, the display of any signs or other advertising matter stating "Whiskey for Sale", "Whiskey Today", "Whiskey in Stock", "Whiskey Available", or containing language of a similar nature on any door or window or in any show window or on the exterior of retail licensed premises, is prohibited. See Notice to all retail licensees of August 14, 1944.

My earnest advice is that, before you place any sign on any door or window or in any show window or on the exterior of your licensed premises other than those expressly permitted by Regulations No. 21, you forward a facsimile thereof to this Department for ruling.

Very truly yours,  
ALFRED E. DRISCOLL  
Commissioner.

3. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against )

WLADYSLAW & ALICE WODKA )  
193-97 Western Parkway )  
Irvington, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-68 for fiscal year 1943-44 and License C-68 for current (1944-45) fiscal year, both issued by the Board of Commissioners of the Town of Irvington. )  
----- )

Wladyslaw & Alice Wodka, Pro ses.  
Edward F. Ambrose, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licenseses have pleaded guilty to a charge alleging that on May 23, 1944 they possessed one 4/5 quart bottle labeled "Four Roses Fine American Whiskey, A Blend of Straight Whiskies 90 Proof" and one 4/5 quart bottle labeled "Imperial, Hiram Walker's Blended Whiskey 86 Proof", both of which bottles contained alcoholic beverages which were not genuine as labeled, in violation of R.S. 33:1-50.

On the day in question, Federal agents, upon testing a number of open bottles in this tavern, seized four bottles suspected of being "refills". Two of the seized bottles, while comparing favorably in proof, nevertheless, differed substantially in the amounts of solids and acids and percentages of artificial coloring in comparison with authentic samples.

The wife admits pouring the contents "of a few different bottles together" in order to decrease the number of bottles on the bar. She states it wasn't done with the idea of defrauding but simply because of a mistaken impression on her part that "all whiskey was the same."

It has been repeatedly pointed out that the customer is entitled to receive the beverage ordered and the fact that one of the licenseses acted under a mistaken impression is no excuse for the violation. I shall suspend the license for a period of ten days.

This Department is advised that on or about August 11, 1944, one of the licenseses, Wladyslaw Wodka died.

Accordingly, it is, on this 18th day of August, 1944,

ORDERED that Plenary Retail Consumption License C-68 for the current (1944-45) year issued by the Board of Commissioners of the Town of Irvington to Wladyslaw & Alice Wodka, and now held by Alice Wodka, as surviving partner, for premises 193-97 Western Parkway, Irvington, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A.M. August 28, 1944 and terminating at 2:00 A.M., September 7, 1944.

ALFRED E. DRISCOLL,  
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against FROHSINN SINGING SOCIETY, INC. 1210 Liberty Street, Camden, New Jersey, Holder of Club License CB-19, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

CONCLUSIONS AND ORDER

Bennett & Bennett, Esqs., Attorneys for Defendant-Licensee. Edward F. Ambrose, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded guilty to charges alleging that on Sunday, June 30, 1944, it sold alcoholic beverages after 2:00 A.M., in violation of a local ordinance.

It appears that agents of the Department of Alcoholic Beverage Control entered the premises on the above date at about 10:00 A.M. and found thirty or forty people in the bar-room being served alcoholic beverages. While the agents were refused service, there is no doubt that the defendant was making full use of its alcoholic beverage license on Sunday, contrary to the City of Camden ordinance.

This is defendant's first adjudicated offense. Therefore, I shall impose the usual minimum suspension of fifteen days. Five days thereof will be remitted because of the guilty plea. Re Germania Mannerchor, Bulletin 570, Item 11.

Accordingly, it is, on this 18th day of August, 1944,

ORDERED that Club License CB-19, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Frohsinn Singing Society, Inc., for premises 1210 Liberty Street, Camden, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A.M. August 28, 1944, and terminating at 2:00 A.M., September 7, 1944.

ALFRED E. DRISCOLL, Commissioner.

5. MUNICIPAL REGULATIONS - HOURS OF SALE - MAY BE ENACTED ONLY BY ORDINANCE - SUBSEQUENT TO JULY 18, 1939, RESOLUTIONS PURPORTING TO EXTEND HOURS OF SALE HAVE NO LEGAL FORCE AND EFFECT (P. L. 1939, c. 234).

August 18, 1944

Mr. Ernest A. Oaks  
Clerk of Franklin Township,  
Quakertown, N. J.

Dear Mr. Oaks:

I have your letter of August 15th, replying to ours of the 10th, relating to the closing hours of Ambrose Gansfuss, holder of plenary retail consumption license in Franklin Township.

Enclosed with your letter is a copy of a resolution, passed by the Township Committee on June 2, 1944, authorizing issuance of a plenary retail consumption license to Ambrose Gansfuss and purporting to extend the particular licensee's Saturday closing hour from 2:00 a.m. to 3:00 a.m. Sunday. Your letter explains that the resolution was adopted after Mr. Gansfuss had asked the Committee to extend the closing hour to 3:00 a.m., stating that "he had trouble in getting his place of business cleared out by that time, on account of patrons who came in after the late movies."

The resolution passed on June 2, 1944, so far as it purports to extend the Sunday morning closing hour, has no legal force or effect. Since July 18, 1939, when P. L. 1939, c. 234 became effective, our municipalities have had authority to enact alcoholic beverage regulations, including hours of sale regulations, by ordinance only. (Chapter 234 provides, however, that regulations adopted before July 18, 1939, whether by ordinance or resolution, shall continue in full force and effect until repealed or changed by ordinance.)

The effective "hours" provision in Franklin Township is contained in Section IV of an ordinance adopted by the Township Committee June 28, 1940. That provision prohibits sale of alcoholic beverages in the Township on weekdays, between the hours of 2:00 a. m. and 7:00 a. m.; and on Sundays, between the hours of 2:00 a. m. and noon.

Our records show the Gansfuss license to be the only alcoholic beverage license outstanding in Franklin Township. A copy of this letter is being forwarded to Mr. Gansfuss, who must understand that sales in violation of the Township ordinance adopted June 28, 1940 will subject his license to suspension or revocation.

Very truly yours,  
ALFRED E. DRISCOLL  
Commissioner.

## 6. FIFTH WAR LOAN CAMPAIGN

August 21, 1944

## TO MEMBERS OF THE NEW JERSEY ALCOHOLIC BEVERAGE INDUSTRY:

Final figures certified to the U. S. Treasury Department reveal that the New Jersey alcoholic beverage industry sold and purchased bonds in the impressive sum of \$20,056,417.00 in the Fifth War Loan Campaign, as will more fully appear from the following schedule.

My congratulations to the men and women who made this fine showing possible. I extend my personal thanks to the members of my committee, the County Chairmen and to each and every participant in the Fifth War Loan Campaign for the splendid manner in which they responded to the call of duty. The members of the New Jersey alcoholic beverage industry have good reason for feeling pleased with their contribution.

<u>COUNTY</u>	<u>TOTAL</u>
Atlantic	\$2,982,700.00
Bergen	621,175.00
Burlington	59,825.00
Camden	865,089.00
Cape May	366,848.00
Cumberland	351,162.50
Essex	7,692,225.00
Gloucester	43,900.00
Hudson	2,626,538.00
Hunterdon	51,530.00
Mercer	472,675.00
Middlesex	441,212.00
Monmouth	981,075.00
Morris	160,212.50
Ocean	32,200.00
Passaic	1,148,525.00
Salem	43,175.00
Somerset	111,850.00
Sussex	18,450.00
Union	883,575.00
Warren	<u>102,475.00</u>

\$20,056,417.00

ALFRED E. DRISCOLL,  
State Chairman, Alcoholic Beverage  
Division, War Loan Campaigns.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE AND RULE 1 OF STATE REGULATIONS NO. 38 - SALE BY CLUB LICENSEE TO NON-MEMBERS IN VIOLATION OF R. S. 33:1-12(5) AND R. S. 33:1-2(3) - SALE OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION - LICENSEE SUSPENDED FOR PERIOD OF 45 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

8th WARD DEMOCRATIC CLUB, INC. )  
1724 Broadway )  
Camden, N. J., )

CONCLUSIONS AND ORDER

Holder of Club License CB-35, )  
issued by the Municipal Board of )  
Alcoholic Beverage Control of the )  
City of Camden. )  
----- )

Rose & Epstein, Esqs., Attorneys for Defendant-Licensee.  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleaded non vult to charges that it (1) sold alcoholic beverages on Sunday, in violation of a local ordinance; (2) sold alcoholic beverages to persons other than members or bona fide guests of members, in violation of R. S. 33:1-12(5) and R. S. 33:1-2; (3) sold alcoholic beverages on Sunday, in violation of Rule 1 of State Regulations No. 38; and (4) sold alcoholic beverages for off-premises consumption, in violation of R. S. 33:1-12(5) and R. S. 33:1-2.

The departmental file discloses that on Sunday, July 16, 1944, at 9:30 P. M., two investigators of the Department of Alcoholic Beverage Control entered the licensed premises of defendant. The investigators, upon observing five patrons at the bar drinking what appeared to them to be alcoholic beverages, each ordered a glass of beer. Service of the beer was made, as were several more glasses of beer and a glass of whiskey during the time of their stay in the tap room. One of the investigators purchased two bottles of beer which were wrapped in newspaper by the president of the defendant club who was tending bar, to be consumed off the licensed premises. Neither of the investigators were members of the club nor bona fide guests of members.

Under the circumstances, I shall suspend the license of defendant for a period of forty-five days, less five days in mitigation for the plea entered herein, making a net suspension of the license for a period of forty days. Cf. 4th Ward Italian Republican Club, Bulletin 630, Item 5.

Accordingly, it is, on this 21st day of August, 1944,

ORDERED, that Club License CB-35, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to 8th Ward Democratic Club, Inc., for premises 1724 Broadway, Camden, be and the same is hereby suspended for a period of forty (40) days, commencing at 2:00 A. M. August 25, 1944 and terminating at 2:00 A. M. October 4, 1944.

ALFRED E. DRISCOLL  
Commissioner.

8. APPELLATE DECISIONS - UMBERGER v. TOWNSHIP OF ANDOVER.

BETTY UMBERGER and WILLIAM UMBERGER, T/a CLEARWATER LODGE, )  
 Appellants, )  
 -vs- )  
 TOWNSHIP OF ANDOVER, SUSSEX COUNTY, NEW JERSEY, )  
 Respondent )  
 - - - - - )

ON APPEAL  
CONCLUSIONS AND ORDER

William A. Dolan, Esq., Attorney for the Appellants.  
Peter Friedman, Esq., Attorney for the Respondent.

BY THE COMMISSIONER:

Appellants appeal from the action of respondent denying their application for a plenary retail consumption license for the current (1944-45) fiscal year, for premises located at Clearwater and Newton-Sparta Roads, Andover Township. The license for said premises for the prior fiscal year which expired at midnight, June 30, 1944, was held by Betty Umberger alone, and hence the application filed by both appellants herein must be considered an application for a new license rather than an application for a renewal of the license previously held by Betty Umberger. R. S. 33:1-96, as amended by Chapter 187, P. L. 1944.

By agreement between the parties, the appeal herein was submitted to the Commissioner upon a stenographic transcript of the proceedings before the local issuing authority on June 29, 1944. See Rule 8 of State Regulations No. 14.

From the transcript of the evidence it appears that, on the afternoon of June 10, 1944, Sheriff Van Atta of Sussex County saw a boy, who was apparently intoxicated, seated on the bumper of an automobile parked near appellant's premises. The Sheriff entered the premises and was told by William Umberger that the boy had not been inside the tavern. As a result of subsequent investigation by the Sheriff, he filed written objections with respondent to the issuance of the license for the current fiscal year.

At the hearing held by respondent on said objections, testimony was given by the Sheriff, by six minors including the boy previously referred to, and by the appellants herein. The boy, William \_\_\_\_\_, aged seventeen, testified that he had been present in the licensed premises on the afternoon of June 10, 1944, and that he had been served five drinks of whiskey by the bartender, William Umberger, as a result of which he became sick. Three other boys, aged respectively seventeen, eighteen and nineteen years of age, testified that they had been served alcoholic beverages by William Umberger in the licensed premises on the afternoon of June 10, 1944, and that they had previously been served alcoholic beverages in the licensed premises on December 31, 1943 or January 1, 1944. Two girls, both twenty years of age, testified that they had been served ale by William Umberger in the licensed premises on the afternoon of June 10, 1944.

The testimony given by William Umberger at the hearing consisted of a denial that any of the minors had been served alcoholic beverages on June 10, 1944, and an attempt to show that some of the minors had testified falsely because he had refused to cash a check for them. William Umberger admitted that the girls had consumed ale on the licensed premises. The testimony of Betty Umberger, who was not present when the alleged violations occurred, concerned chiefly events which occurred during the investigation of the alleged sales to minors.

After considering all this testimony, respondent adopted "findings" wherein it referred to the prior record of Betty Umberger, stated that "This Township Committee feels that the promiscuous sale of alcoholic beverages to minors, such as occurred on the licensed premises on June 10, 1944, cannot be tolerated", and denied the application for license of Betty Umberger and William Umberger.

The records of the Department of Alcoholic Beverage Control show that, on September 15, 1943, the license then held by Betty Umberger was suspended for ten days after she had pleaded non vult to charges alleging that she sold alcoholic beverages to four minors on August 21, 1943. In that case the sale was made by a temporary employee. Re Umberger, Bulletin 585, Item 9.

Appellants now contend: (1) the evidence introduced at the hearing was not of that convincing character that should be required to justify the conclusions reached; and (2) in the event a review of the evidence in the opinion of the Commissioner justified a finding that there have been violations, such violations did not justify the refusal of the license or the severe penalty suffered by the appellants.

As to (1): The evidence presented fully convinces me that, on June 10, 1944, alcoholic beverages were sold by William Umberger to six minors ranging in age from seventeen to twenty.

As to (2): A license is a privilege and not a right. It is the duty of local issuing authorities, among other things, to investigate applicants for licenses. R. S. 33:1-24. No question of a penalty is involved in this case. The refusal was not made to punish the applicants but to protect the public. Kaplan v. Newark, Bulletin 269, Item 6. The evidence considered in connection with the prior record of Betty Umberger was amply sufficient to justify denial of the license. The action of respondent is affirmed.

Accordingly, it is, on this 23rd day of August, 1944,

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

ALFRED E. DRISCOLL  
Commissioner.

9. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against )

JOHN FURNARI )  
T/a RIVIERA TAVERN )  
24-26 Washington Avenue )  
Nutley, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-5 for the fiscal year 1943-44 and now holder of Plenary Retail Consumption License C-5 for the current (1944-45) fiscal year, both issued by the Board of Commissioners of the Town of Nutley. )  
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A. Theodore DeMuro, Esq., Attorney for Defendant-Licensee.  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee has pleaded non vult to charges alleging that, on May 31, 1944, he possessed two 4/5 quart bottles labeled "Wilson 'That's All' Blended Whiskey 86.8 Proof" and two 4/5 quart bottles labeled "Calvert Special Blended Whiskey 86.8 Proof", all of which contained alcoholic beverages which were not genuine as labeled, in violation of R. S. 33:1-50.

On the night in question, a Federal agent tested a number of bottles at the licensee's premises and found four of them unsatisfactory. Subsequent analysis by a Federal chemist indicated that rum had been added to the original contents of the bottles.

The licensee admitted the violations and claimed that the rum had been added by the bartender while the licensee was away on a vacation, and that he had no knowledge of the violation until the inspection by the Federal agent.

As far back as Re Kneller, Bulletin 49, Item 4, and recently in Re Oprandy, Bulletin 600, Item 5, it was emphasized that a licensee may not hide behind the cloak of his employees. "The license is his. So is the business. It is his duty to see to it that the business is conducted in accordance with the law."

The licensee has no prior record and I shall, therefore, impose the minimum penalty. His license will be suspended for a period of ten days.

Accordingly, it is, on this 23rd day of August, 1944,

ORDERED, that Plenary Retail Consumption License C-5, issued by the Board of Commissioners of the Town of Nutley to John Furnari, t/a Riviera Tavern, for premises 24-26 Washington Avenue, Nutley, for the current (1944-45) fiscal year, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A. M. August 29, 1944, and terminating at 2:00 A. M. September 8, 1944.

ALFRED E. DRISCOLL  
Commissioner.

10. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PREVIOUS RECORD - LICENSE SUSPENDED FOR 20 DAYS,

In the Matter of Disciplinary Proceedings against

PREAKNESS HILLS COUNTRY CLUB INC., t/a "PREAKNESS HILLS COUNTRY CLUB", Ratzer Road, Preakness, Wayne Township, P.O. Paterson, RFD #4, New Jersey,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-13 issued by the Township Committee of the Township of Wayne.

Preakness Hills Country Club Inc., by Joseph Shulman, President. Edward F. Ambrose, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult to a charge alleging that on June 16, 1944, it possessed nine bottles containing alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

The file discloses that an investigator of the Department of Alcoholic Beverage Control made a routine inspection of defendant's premises on June 16, 1944. He seized the nine opened bottles mentioned in the charge, at the basement bar, and also tested sixteen opened bottles at the bar on the main floor of the licensed premises. The latter bottles contained alcoholic beverages genuine as labeled.

Defendant places the blame upon a former employee who was in charge of the basement bar until the date of his discharge in May 1944. Nevertheless, defendant is completely responsible for the condition of its liquor stock. Re Kurian, Bulletin 517, Item 2. Defendant alleges also that "this was a mishap and certainly not an attempt on our part to mislead our purchasers of liquor, for profit or any other reason, since 98% of our purchasers are our own club members."

Defendant has a prior record. In March 1939 its license was suspended for twenty-four days by the local issuing authority after it had pleaded guilty to charges of permitting a non-licensee to operate under its license and also possessing slot machines. Under all the circumstances, I shall suspend the license in this proceeding for a period of twenty days.

Accordingly, it is, on this 24th day of August, 1944,

ORDERED that plenary retail consumption license C-13, issued by the Township Committee of the Township of Wayne to Preakness Hills Country Club Inc., t/a "Preakness Hills Country Club," for premises on Ratzer Road, Preakness, Wayne Township, be and the same is hereby suspended for a period of twenty (20) days commencing at 3:00 A.M. August 28, 1944, and terminating at 3:00 A.M. September 17, 1944.

ALFRED E. DRISCOLL, Commissioner.

## 11. APPELLATE DECISIONS - SAMPERI v. HOBOKEN.

JOSEPH SAMPERI, trading as )  
 UNION CLUB, )

Appellant, )

v. )

BOARD OF COMMISSIONERS OF THE )  
 CITY OF HOBOKEN, )

Respondent. )

ON APPEAL  
 CONCLUSIONS AND ORDER

James F. McGovern, Jr., Esq., Attorney for Appellant.

John J. Fallon, Esq., by Robert F. McAlevy, Jr., Esq., Attorney  
 for Respondent.

BY THE COMMISSIONER:

Appellant, the holder of a plenary retail consumption license for premises located at 600 Hudson Street, in the City of Hoboken, appeals from the action of respondent revoking his license. Respondent imposed the revocation after finding the licensee guilty of a charge of selling alcoholic beverages to minors.

By consent, a transcript of the testimony taken below was introduced in evidence at the hearing on appeal. From this transcript, it appears that on July 1, 1944, a ballroom, which is located on the second floor of the appellant's premises, was rented to employees of a local factory for a dance. Among the employees who attended this dance, were Mary \_\_\_\_\_, age sixteen, and Catherine \_\_\_\_\_, age seventeen. These girls brought with them Mary's younger sister Rose \_\_\_\_\_, age fourteen, and were accompanied by an adult. Upon entering the licensed premises, the persons just mentioned went directly to the ballroom and took seats at a small table. A throng of approximately two or three hundred persons were then in attendance. Thereafter, a waiter employed by the appellant came to the table and a member of the group ordered a round of drinks. Catherine states that she ordered a Tom Collins. Rose said that she too would have a Tom Collins but testified, "I didn't know what it was." Mary ordered a glass of beer, and the man ordered whiskey. The four drinks were delivered to the table by the waiter. Rose testified at the hearing that she did not consume any of her drink and her testimony was corroborated by one of the other minors. I am satisfied that both of the other minors consumed their drinks. Only one round of drinks was served and the party left the premises shortly thereafter.

At the hearing conducted by respondent, the minors were permitted to testify as to their respective ages and in each case their testimony was corroborated by the introduction of a baptismal certificate or birth certificate. This evidence was sufficient to establish the age of the minors. See Wignore on Evidence, Sec. 667; State v. Huggins, 83 N.J.L. 43; Abad v. Newark, Bulletin 619, Item 8. The waiter admitted at the hearing that he served the drinks ordered. After reviewing all the testimony, I conclude that the evidence establishes that alcoholic beverages were served the minors as charged by respondent. Whether or not the youngest minor consumed any part of her drink, the evidence establishes that the appellant allowed, permitted or suffered the service or delivery of an alcoholic beverage to each of the minors mentioned in the charge. Hence, I shall affirm the finding of guilt.

The only point remaining is the question of the penalty, which appellant argues is excessive. I have had an opportunity to observe these minors and while they appear somewhat older than the ages stated, they were, none the less, quite apparently minors. Appellant has been operating the licensed premises in question for nine years, and has also operated another licensed premises in the City of Hoboken since Repeal. He has no prior adjudicated record as to either of these premises. He did not personally participate

in the present violation, and there is testimony that he instructed his waiters to be careful not to sell to minors - particularly on this evening when the dance was attended by many young persons. The offense herein is aggravated by the fact that a sixteen-year old minor and a seventeen-year old minor were permitted to consume alcoholic beverages and that alcoholic beverages were served to a fourteen-year old minor. It was merely a fortuitous circumstance that the fourteen-year old minor did not consume the drink served to her.

The penalty to be imposed after a finding of guilt is largely within the discretion of the authority hearing the disciplinary proceedings. Accordingly, I hesitate to moderate any penalty inflicted by an issuing authority and will do so only in those cases where it clearly appears that the penalty imposed is excessive. The purpose of a suspension is to punish. The purpose of a revocation is not alone to eliminate immediately from the liquor business the person against whom the revocation runs, but to deprive him of the right to hold any license for a period of two years from the effective date of the order of revocation. R. S. 33:1-31.

Without departing one iota from my position that the sale of alcoholic beverages to minors is to be viewed as a serious violation meriting stern punishment, and wherever aggravated by conduct or repetition, revocation, I have reached the conclusion that the punishment imposed in the present case is unduly severe. In reaching this conclusion, I have taken into consideration the following: the appellant's previous good record over a substantial number of years; the fact that he did not personally participate in the violation and that the sale and service was made by an employee apparently contrary to appellant's orders. The licensee, of course, is responsible for the acts of his agents. Where they fail to observe the law either because of carelessness or lack of supervision or adequate precautions, the licensee must expect to suffer the consequences. The law with respect to minors is designed to protect society by protecting the minor even against his own misguided appetite. Licensees who desire to avoid violations and the punishment incident thereto must strictly observe the provisions of R.S. 33:1-77. In the instant case, however, after allowing reasonable latitude for differences of opinion, a sixty-day suspension would appear to be a proper punishment.

Accordingly, it is, on this 24th day of August, 1944,

ORDERED that the penalty of revocation of plenary retail consumption license C-9, issued to Joseph Samperi, trading as Union Club, for premises 600 Hudson Street, Hoboken, be and the same is hereby modified to a suspension for a period of sixty (60) days, effective at 2:00 A.M., August 29, 1944, and terminating at 2:00 A.M., October 28, 1944; and it is further

ORDERED that the order heretofore entered staying respondent's order shall continue in effect until the suspension imposed herein shall become effective.

*Alfred E. Dunsen*  
Commissioner.