

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

BULLETIN 749

FEBRUARY 17, 1947.

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - RUOFF v. GLOUCESTER.
2. SUSPENSIONS IN ILLICIT LIQUOR CASES.
3. DISCIPLINARY PROCEEDINGS (Lyndhurst) - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
4. DISCIPLINARY PROCEEDINGS (Jefferson Township) - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
5. DISCIPLINARY PROCEEDINGS (Jersey City) - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
6. DISCIPLINARY PROCEEDINGS (Jersey City) - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
7. SEIZURE - FORFEITURE PROCEEDINGS - ARTICLES USED OR ADAPTABLE FOR USE IN OPERATION OF AN UNREGISTERED STILL ORDERED FORFEITED - PADLOCKING WAIVED.
8. COURT DECISIONS - NEW JERSEY SUPREME COURT - MAURIELLO v. DRISCOLL - APPLICATION FOR A WRIT OF CERTIORARI DENIED.
9. DISCIPLINARY PROCEEDINGS (Jersey City) - ILLICIT LIQUOR - FALSE STATEMENT IN APPLICATION - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
10. DISCIPLINARY PROCEEDINGS (Jersey City) - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
11. DISCIPLINARY PROCEEDINGS (Maple Shade Township) - ILLICIT LIQUOR - PREVIOUS WARNING - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.
12. STATE LICENSES - NEW APPLICATIONS FILED.

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

February 17, 1947.

BULLETIN 749

1. APPELLATE DECISIONS - RUOFF v. GLOUCESTER.

GOTTHILF RUOFF, t/a JOURNEY'S)
END RANCH INN,)

Appellant,)

-vs-

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF GLOUCESTER (CAMDEN)
COUNTY),)

Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

Frank M. Lario, Esq., Attorney for Appellant.
George D. Rothermel, Esq., Attorney for Respondent.

This is an appeal from a sixty-day suspension of appellant's plenary retail consumption license for premises on Sicklerville Road, Gloucester Township.

On December 30, 1946, respondent suspended appellant's license for sixty days, effective January 6, 1947, at 2:00 a.m., after he had pleaded nolo contendere to three charges in disciplinary proceedings which had been instituted against him. The charges alleged, in effect, (1) that appellant sold alcoholic beverages on his licensed premises between 2:00 a.m. and 7:00 a.m. on November 2, 1946, in violation of a local ordinance; (2) that he failed to have his licensed premises closed between 2:00 a.m. and 7:00 a.m. on November 2, 1946, in violation of a local ordinance; and (3) that he hindered and failed to facilitate the investigation being made on November 2, 1946, such hindrance and failure to facilitate being in violation of R. S. 33:1-35.

A stay of the suspension pending determination of this appeal was denied, and appellant's license has been under suspension since 2:00 a.m. January 6, 1947.

Prior to the suspension imposed herein, respondent, in disciplinary proceedings, had suspended appellant's license for fifteen days, effective July 29, 1946, after he had been found guilty of selling alcoholic beverages after 2:00 a.m. on Sunday, June 16, 1946, in violation of a local ordinance.

The sole contention of appellant is that the penalty imposed herein is excessive. In support of his contention, appellant cites numerous disciplinary cases decided by the Commissioner of Alcoholic Beverage Control, and Malaga v. Clark, Bulletin 622, Item 8. Respondent contends that the suspension imposed in the present case was reasonable because it involved a second violation of a similar character committed within a period of five months, and also because the present case also involved the hindering of an investigation. As to the latter point, it appears that an ABC agent observed the bartender serving a glass of beer to a patron at about 2:25 a.m. November 2, 1946; that the agent was denied admission to the licensed premises for a period of time and that, before the agent was finally admitted, the licensee had attempted to remove evidence that he had served alcoholic beverages during prohibited hours.

In Creston Holding Co. v. Belleville, Bulletin 544, Item 2, Commissioner Driscoll said:

"The penalty to be administered in a local disciplinary proceeding rests, in the first instance, within the sound discretion of the municipality. The power of the Commissioner to reduce a penalty on appeal is confined to those cases where the penalty is manifestly unreasonable."

The fact that the Commissioner may have suspended licenses in somewhat similar cases for a period less than sixty days does not preclude the local issuing authority from imposing a longer period of suspension within the limits of sound discretion. The case of Malaga v. Clark, supra, wherein the Commissioner reduced the suspension to forty-five days, is clearly distinguishable because in that case the violation of the closing ordinance appeared to be of a technical nature.

After examining all the facts of this case, I cannot say that respondent abused its discretion in suspending appellant's license for a period of sixty days. For the reasons stated above, the action of respondent is affirmed.

Accordingly, it is, on this 5th day of February, 1947,

ORDERED that the action of respondent be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Deputy Commissioner.

2. SUSPENSIONS IN ILLICIT LIQUOR CASES.

February 11, 1947.

On August 22, 1946, Cedar Restaurant and Cafe Co. obtained a writ of certiorari in the New Jersey Supreme Court to review an order entered by me suspending its license for thirty days for possession of illicit liquor. By reason of the allowance of the writ, the suspension against Cedar Restaurant and Cafe Co. has been held in abeyance pending decision of the court.

In order to treat all licensees on an equal basis I also lifted temporarily, on my own motion, the suspensions then being served by ten other licensees, and announced the policy that the effective date of any suspension imposed in similar cases, then pending or thereafter instituted, would not be fixed unless and until the issue had been resolved favorably to the Department of Alcoholic Beverage Control. Bulletin 727, Item 12.

Thereafter the New Jersey Supreme Court, after hearing the proceedings, dismissed the writ with costs. Bulletin 748, Item 9.

Accordingly, orders of suspension have been entered, dated February 10, 1947, effective as follows:

AS TO THE TEN LICENSEES WHOSE SUSPENSIONS WERE TEMPORARILY INTERRUPTED

Rebecca Kravis, Atlantic City (718-1)	12:01 a.m. Feb. 24, 1947	to	12:01 a.m. March 27, 1947
John Ostrowski, Hackensack (726-5)	3:00 a.m. Feb. 24, 1947	to	3:00 a.m. March 13, 1947
Alberta C. Sofroney, Hamilton Twp. (726-9)	4:00 a.m. Feb. 24, 1947	to	4:00 a.m. March 6, 1947
Helen Tomasello, Folsom Borough (726-7)	12:01 a.m. Feb. 25, 1947	to	12:01 a.m. March 17, 1947
John Herman, Hamilton Twp. (727-2)	4:00 a.m. Feb. 24, 1947	to	4:00 a.m. March 6, 1947
Chas. & Sophie Grembowiec, Lodi (727-1)	4:00 a.m. Feb. 24, 1947	to	4:00 a.m. March 8, 1947

In the suspensions set forth above, each of the licensees, except Ostrowski (who had received the benefit of his plea) and Grembowiec (who proceeded to trial) was given the benefit of the subsequently adopted policy whereby five days of the suspension were remitted in cases where a licensee pleaded guilty or non vult. (Re Gelb, Bulletin 741, Item 8.)

The following licensees, while the original suspension continued in effect, waived the stay granted in Bulletin 727, Item 12, and fully served the suspension originally imposed. Hence, as to these cases, no further order will be entered herein:

Ellbee, Inc.,	Newark
Anthony A. Spagnuolo,	Newark
Biondi & Firschbaum,	Irvington

No order is being entered at this time affecting the balance of the suspension to be served by Charles E. Betz, Ocean Township, because other charges are pending against the licensee and both matters will be disposed of at the same time.

AS TO LICENSEES AGAINST WHOM DISCIPLINARY PROCEEDINGS WERE PENDING ON, OR INSTITUTED AFTER, AUGUST 22, 1946

Nicholas DeVita, Sandyston Twp. (729-7)	12:01 a.m. Feb. 24, 1947	to	12:01 a.m. March 11, 1947
Michael & Mary Franek, Franklin Borough (730-4)	3:00 a.m. Feb. 24, 1947	to	3:00 a.m. March 11, 1947
Gustav Buchner & Fred G. Joergens, Irvington (730-5)	2:00 a.m. Feb. 24, 1947	to	2:00 a.m. March 11, 1947
Morris Krumholz & Abraham Charnick, Newark (730-7)	2:00 a.m. Feb. 24, 1947	to	2:00 a.m. March 6, 1947
Cal's Bar, Inc., Newark (730-8)	2:00 a.m. Feb. 25, 1947	to	2:00 a.m. March 17, 1947
George W. Lydon, Atlantic City (731-4)	12:01 a.m. Feb. 24, 1947	to	12:01 a.m. March 21, 1947
Louis Oliver, Union City (731-7)	3:00 a.m. Feb. 24, 1947	to	3:00 a.m. March 6, 1947

Vincent Paul Manning, Sea Bright (732-1)	3:00 a.m. Feb. 24, 1947	to	5:00 a.m. March 6, 1947
Andrew Boshart, Jersey City (733-3)	2:00 a.m. Feb. 24, 1947	to	2:00 a.m. March 6, 1947
Milton Rippon, West Milford Twp. (733-6)	2:00 a.m. Feb. 24, 1947	to	2:00 a.m. March 21, 1947
Frank Moscarelli, Woodbridge Twp. (734-6)	2:00 a.m. Feb. 24, 1947	to	2:00 a.m. March 11, 1947
Richard J. Reynolds & Elsie Reynolds, West New York (735-3)	3:00 a.m. Feb. 24, 1947	to	3:00 a.m. March 6, 1947
Ferdinando Pisani, Hoboken (735-4)	2:00 a.m. Feb. 24, 1947	to	2:00 a.m. March 11, 1947
Jos. & Frederick H. DiOrio, Somers Point (735-5)	3:00 a.m. Feb. 24, 1947	to	3:00 a.m. March 11, 1947
Neilson Beverage Co., Inc., New Brunswick (736-3)	2:00 a.m. Feb. 24, 1947	to	2:00 a.m. March 11, 1947
Mervin Stern, Weehawken (736-8)	3:00 a.m. Feb. 24, 1947	to	3:00 a.m. March 6, 1947
Domenica Filerino, Bayonne (738-7)	2:00 a.m. Feb. 25, 1947	to	2:00 a.m. March 17, 1947

In all of the above cases the licensees were given the benefit of the subsequently adopted policy whereby five days were remitted for a plea of guilty or non vult, except Buchner & Joergens (who proceeded to trial), and Pisani (who proceeded to trial), and Rippon (who had previously received the benefit of his plea).

Rose Gelb, Union Beach (741-8)	2:00 a.m. Feb. 24, 1947	to	2:00 a.m. March 11, 1947
Alps, Inc., Perth Amboy (741-11)	2:00 a.m. Feb. 24, 1947	to	2:00 a.m. March 26, 1947
Boulevard Tavern Inc. West New York (742-1)	3:00 a.m. Feb. 24, 1947	to	3:00 a.m. March 11, 1947
James J. Tumulty, Dunellen (742-8)	1:00 a.m. Feb. 24, 1947	to	1:00 a.m. April 25, 1947
Mrs. Emil Macho, Manalapan Twp. (744-2)	1:00 a.m. Feb. 24, 1947	to	1:00 a.m. March 11, 1947
Arthur Jegge, Pompton Lakes (744-3)	3:00 a.m. Feb. 24, 1947	to	3:00 a.m. March 6, 1947
Joseph Steshko, Bayonne (744-6)	2:00 a.m. Feb. 24, 1947	to	2:00 a.m. March 11, 1947
Nicholas Panageas, Jersey City (744-14)	2:00 a.m. Feb. 24, 1947	to	2:00 a.m. March 6, 1947
Antoni Ivanowski, Clifton (745-2)	3:00 a.m. Feb. 24, 1947	to	3:00 a.m. March 11, 1947

Jack Harris, Jersey City (745-9)	2:00 a.m. Feb. 24, 1947	to	2:00 a.m. March 21, 1947
Emil Befort & Richard A. Befort, Jersey City (746-1)	2:00 a.m. Feb. 24, 1947	to	2:00 a.m. March 6, 1947
Samuel Brauer, Irvington (746-4)	2:00 a.m. Feb. 24, 1947	to	2:00 a.m. March 21, 1947
Frank Manziano, Jersey City (746-9)	2:00 a.m. Feb. 24, 1947	to	2:00 a.m. March 6, 1947
Aaron Loss, Jersey City (746-10)	2:00 a.m. Feb. 24, 1947	to	2:00 a.m. March 6, 1947
Max Jacobs, Newark (747-4)	2:00 a.m. Feb. 24, 1947	to	2:00 a.m. March 6, 1947
James Tsalos, Raritan Twp. (747-5)	2:00 a.m. Feb. 24, 1947	to	2:00 a.m. March 11, 1947
John J. Visaggi, Jersey City (747-6)	2:00 a.m. Feb. 25, 1947	to	2:00 a.m. March 17, 1947
Charles Bryant, Newark (747-7)	2:00 a.m. Feb. 24, 1947	to	2:00 a.m. March 6, 1947
Minnie Goldberg, Little Falls (748-3)	2:00 a.m. Feb. 24, 1947	to	2:00 a.m. March 11, 1947

Investigation has shown that the following licensed premises are closed at the present time and, hence, orders fixing the effective dates of the respective suspensions will be entered when the premises are reopened for business:

Cedar Restaurant and Cafe Co., Long Branch (726-1)
 Lola G. Riley, Wildwood (730-3)
 Thomas Milonakis, Asbury Park (730-6)
 Hi-Hat Bar, Inc., Keansburg (734-5)
 Edwin A. Dolan & Mrs. Mary A. Reininger, Point Pleasant (736-9)
 Congress Hall Hotel Company, Cape May (741-12)

ERWIN B. HOCK
 Deputy Commissioner.

3. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
 PETER J. BERKYTA)
 T/a RIVERSIDE BAR & GRILL)
 10 Riverside Avenue)
 Lyndhurst, N. J.,)
 Holder of Plenary Retail Consumption License C-36, issued by the)
 Board of Commissioners of the)
 Township of Lyndhurst.)
 -----)

CONCLUSIONS AND ORDER

Peter J. Berkyta, Defendant-licensee, Pro Se.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant pleads non vult to a charge that he possessed illicit alcoholic beverages at his licensed premises, in violation of R. S. 33:1-50.

On November 21, 1946, an agent of the Alcohol Tax Unit, Internal Revenue Service of the Federal Treasury Department, seized a 4/5 quart bottle labeled "Kinsey Distilled Dry Gin" when his preliminary tests indicated that the contents thereof were not genuine as labeled. Subsequent analysis by the Federal chemist disclosed that this bottle had been wholly or partly refilled with an alcoholic beverage other than that described on the label and that the contents thereof were not genuine as labeled.

Defendant's son, who is employed as a bartender in defendant's premises, admits that he poured into the bottle of Kinsey Distilled Dry Gin the remainder of a bottle of Poland Springs Sloe Gin. Obviously, this was an illegal practice as retailers are not permitted to refill bottles. Re Leda, Inc., Bulletin 678, Item 1. That the defendant personally had no knowledge of and did not personally participate in the illegal act is not necessary to a conviction. Possession is the gravamen of the offense. Re Barrale, Bulletin 705, Item 5.

Defendant has no prior adjudicated record. I shall, therefore, suspend the license for a minimum period of fifteen days, Re Rudol, Bulletin 680, Item 1, and remit five days because of the plea, Re Gelb, Bulletin 741, Item 8, leaving a net suspension of ten days.

Accordingly, it is, on this 10th day of February, 1947,

ORDERED that Plenary Retail Consumption License C-36, issued by the Board of Commissioners of the Township of Lyndhurst to Peter J. Berkyta, t/a Riverside Bar & Grill, for premises 10 Riverside Avenue, Lyndhurst, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. February 24, 1947, and terminating at 2:00 a.m. March 6, 1947.

ERWIN B. HOCK
Deputy Commissioner.

4. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
 RUDOLF STRUNK)
 T/a RUDY'S CASINO)
 Longwood Valley Rd.)
 Jefferson Township)
 P. O. Oak Ridge, N. J.,)
)
 Holder of Plenary Retail Consumption License C-33, issued by the)
 Township Committee of the)
 Township of Jefferson.)
 -----)

CONCLUSIONS AND ORDER

Rudolf Strunk, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded guilty to a charge alleging that he possessed an illicit alcoholic beverage at his licensed premises, in violation of R. S. 33:1-50.

A 4/5 quart bottle labeled "Schenley Reserve Blended Whiskey" was seized by an agent of the Alcohol Tax Unit, Internal Revenue Service, Federal Treasury Department, on December 10, 1946. Subsequent analysis by the Federal chemist disclosed that the bottle had been substantially refilled with an alcoholic beverage not Schenley Reserve Blended Whiskey.

In view of the fact that there is no prior adjudicated record, I shall suspend the license for fifteen days, Re Rudolph, Bulletin 680, Item 1, and remit five days of the penalty because of the plea entered herein, Re Gelb, Bulletin 741, Item 8, leaving a net suspension of ten days.

Accordingly, it is, on this 10th day of February, 1947,

ORDERED that Plenary Retail Consumption License C-33, issued by the Township Committee of the Township of Jefferson to Rudolf Strunk, t/a Rudy's Casino, for premises on Longwood Valley Road, Jefferson Township, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. February 24, 1947, and terminating at 3:00 a.m. March 6, 1947.

ERWIN B. HOCK
Deputy Commissioner.

5. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JOHN TURANSKY)
44 Canal Street)
Jersey City 2, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-433, issued by the Board of Commissioners of the City of Jersey City.)
-----)

John Turansky, Defendant-licensee, Pro Se.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded guilty to a charge alleging that he possessed illicit alcoholic beverages at his licensed premises, in violation of R. S. 33:1-50.

A 4/5 quart bottle labeled "King William IV V.O.P. Brand Blended Scotch Whisky" was seized by an ABC agent on January 8, 1947, and subsequent analysis by the Department chemist indicated that the bottle had been substantially refilled with an alcoholic beverage not King William Scotch Whisky.

In view of the fact that there is no prior adjudicated record, I shall suspend the license for fifteen days, Re Rudolph, Bulletin 680, Item 1, and remit five days of the penalty because of the plea entered herein, Re Gelb, Bulletin 741, Item 8, leaving a net suspension of ten days.

Accordingly, it is, on this 10th day of February, 1947,

ORDERED that Plenary Retail Consumption License C-433, issued by the Board of Commissioners of the City of Jersey City to John Turansky, for premises 44 Canal Street, Jersey City, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. February 24, 1947, and terminating at 2:00 a.m. March 6, 1947.

ERWIN B. HOCK
Deputy Commissioner.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against FRANK CIANI & VINCENT SILVESTRI T/a PHIL'S TAVERN 68 Jordan Avenue Jersey City 6, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-205, issued by the Board of Commissioners of the City of Jersey City.

Carl J. Yagoda, Esq., Attorney for Defendant-licensees. William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

Defendants plead non vult to charges that they possessed illicit alcoholic beverages at their licensed premises in violation of R. S. 33:1-50.

On July 2, 1946, an agent of the Alcohol Tax Unit, Internal Revenue Service of the Federal Treasury Department, seized one 4/5 quart bottle labeled "Mount Vernon Brand Rye Whiskey A Blend" when his preliminary tests indicated that the contents thereof were not genuine as labeled. Subsequent analysis by the Federal chemist disclosed that this bottle had been wholly or partly refilled with an alcoholic beverage other than that described on the label.

It is alleged in an attempt to mitigate the effect of the violation that neither of the said defendants had any knowledge of the "refilling". "Knowledge" is not necessary to complete the violation. Re Barrale, Bulletin 705, Item 5. Cf. Cedar Restaurant & Cafe Co. v. Hock, N. J. Sup., 135 N. J. L. ---, (Bulletin 748, Item 9).

Defendants have no prior adjudicated record. I shall suspend the license for the minimum period of fifteen days. Re Rudolph, Bulletin 680, Item 1, and remit five days because of the plea, Re Gelb, Bulletin 741, Item 8, leaving a net suspension of ten days.

Accordingly, it is, on this 10th day of February, 1947,

ORDERED that Plenary Retail Consumption License C-205, issued by the Board of Commissioners of the City of Jersey City to Frank Ciani & Vincent Silvestri, t/a Phil's Tavern, for premises 68 Jordan Avenue, Jersey City, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. February 24, 1947, and terminating at 2:00 a.m. March 6, 1947.

ERWIN B. HOCK Deputy Commissioner.

7. SEIZURE - FORFEITURE PROCEEDINGS - ARTICLES USED OR ADAPTABLE FOR USE IN OPERATION OF AN UNREGISTERED STILL ORDERED FORFEITED - PADLOCKING WAIVED.

In the Matter of a Seizure on December 18, 1946; of a still and appurtenant equipment, at premises occupied by Charles Countess, located on Pinyard Road, near Monroeville Road, in Upper Pittsgrove Township, County of Salem and State of New Jersey.)	Case No. 7080
-----))	ON HEARING CONCLUSIONS AND ORDER

Charles W. Countess and Dorothy Countess, Pro Se.
Harry Castelbaum, Esc., appearing for the Department of Alcoholic Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 2 of the Revised Statutes, to determine whether a still and appurtenant equipment, described in a schedule attached hereto, seized on December 18, 1946 at premises occupied by Charles W. Countess, located on Pinyard Road, in Upper Pittsgrove Township, New Jersey, constitute unlawful property and should be forfeited, and, further, to determine whether the premises should be padlocked.

ABC agents visited the premises on December 18, 1946 to check a specific complaint that illicit still activities were being carried on there. They spoke with Mr. Countess who, when pressed, told them that there was a still in the barn. Meanwhile, other agents had there located the still, a quantity of mash, a large number of empty five-gallon cans and a quantity of molasses.

Mr. Countess told the agents that about October 15, 1946 he rented the barn to two men; that they represented to him that he would share in the profits of the operation of the still, which would be a considerable amount, although no stated rental was fixed; that the still was operated on two occasions but no salable product was manufactured and he did not receive any payment for the use of his barn; that, acquiring a distaste for the venture, he ordered the still removed about a week before the seizure, and had the impression that it had been dismantled. Countess was arrested on the charge of possessing an unregistered still.

The still was not registered with the State Commissioner of Alcoholic Beverage Control as required by R. S. 33:2-1 and, hence, together with the other personal property seized therewith, constitutes unlawful property and is subject to forfeiture. In addition, the premises are subject to padlocking. R. S. 33:2-5.

When the matter came on for hearing pursuant to R. S. 33:2-4, Charles W. Countess and his wife, Dorothy Countess, appeared and sought to avoid padlocking of the premises. They did not oppose forfeiture of the seized property nor did anyone else appear to contest such forfeiture.

Mr. Countess testified that he and his wife are the owners of the premises, which is a 28-acre farm, purchased by them in 1944 for \$4,100.00, of which they had invested about \$3,100.00; that he raises hay and corn and sells eggs; that he and his wife reside in a five-room dwelling on the farm; that he is in straitened financial circumstances, which made him susceptible to the prospect of earning some additional money from the rental of the barn; that he stores hay in the barn, which is a dilapidated structure, and that he has no other place where he can store the hay.

Mr. Countess further says that he is 28 years of age, is a machinist by trade and has never been convicted of any crime. He claims that when the men originally proposed to rent his barn, it was represented to him that it was to be used in connection with a horse meat business and that when he found out that actually there was a still in the barn, it was too late for him to back out; that he was fearful of reprisal by the operators of the still if he informed the police authorities of what was going on. He further says that after the seizure he aided the Federal authorities by identifying the operators of the still, who were then under arrest.

There is no evidence that Countess personally participated in the operation of the still. This appears to be the first time that he was involved in any violation of the liquor laws. His demeanor and appearance at the hearing is that of a law-abiding person. He was probably misled by the prospect of much-needed "easy money". He is now facing the unpleasant experience of criminal proceedings because he was gullible. Under these circumstances, it would seemingly be unduly harsh to compel him to vacate his home. No purpose will be served by padlocking the dilapidated barn, aside from the fact that such padlocking would compel Countess to remove his hay to some makeshift place of storage. I shall, therefore, waive padlocking. However, this action is in no wise to be regarded as expressive of any opinion as to whether or not Countess is responsible in the criminal proceedings for the presence of the unregistered still on his premises.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property and that the same be and hereby is forfeited in accordance with the provisions of R. S. 33:2-5, and that it be retained for the use of hospitals and State, county and municipal institutions, or destroyed in whole or in part, at the direction of the State Commissioner of Alcoholic Beverage Control.

ERWIN B. HOCK
Deputy Commissioner.

Dated: February 11, 1947.

SCHEDULE "A"

- 1 - copper column
- 1 - copper preheater
- 1 - copper dephlegmator
- 1 - copper cooker
- 1 - set of coils
- 3 - pieces of copper tubing
- 1 - steam boiler
- 1 - galvanized boiler top
- 2 - steam pressure gauges
- 1 - test tube and hydrometer
- 1 - Judson Burns oil burner with Century electric motor
- 1 - Gould hand pump
- 3 - iron drums
- 1 - galvanized iron washtub
- 98 - empty 5-gallon cans
- 7 - 100-gallon wooden barrels - some with mash
- 3 - 50-gallon drums of molasses
- miscellaneous personal property

8. COURT DECISIONS - NEW JERSEY SUPREME COURT - MAURIELLO v. DRISCOLL - APPLICATION FOR A WRIT OF CERTIORARI DENIED.

NEW JERSEY SUPREME COURT

No. 279. May Term, 1946.)
 MATTHEW F. MAURIELLO,)
 Prosecutor,)
 -vs-)
 ALFRED E. DRISCOLL, State Commis-)
 sioner, etc., et al.,)
 Defendants.)
 -----)

Submitted May 7th, 1946; decided

On application for writ of certiorari.

Before Justices Parker and Donges.

For the prosecutor: Hannoeh & Lasser, Esqs.

For the defendants: Walter D. Van Riper, Esq. and Thomas L. Hanson, Esq.

The opinion of the court was delivered by DONGES, J.

Prosecutor applies for a writ of certiorari to review the action of the Commissioner of Alcoholic Beverage Control in refusing to issue to prosecutor a Class B. State Beverage Distributor's License. The application was made under R. S. 33:1-11(2)c, which provides for the license in question. The prosecutor argues that he possessed the required qualifications; that no license of such character had been issued to any licensee in East Orange; that there was need for such service.

The statute imposed upon the Commissioner defendant certain duties, amongst which is R. S. 33:1-5, which provides, "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." And R. S. 33:1-73 provides, "This chapter is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed."

No question was raised as to the standing and qualifications of prosecutor. The Commissioner advised prosecutor that upon careful consideration of the application he "reached the conclusion that your application must be denied on the ground that there does not appear to be any public need and necessity for the issuance of such license to you in the territory in which you propose to locate and operate."

The prosecutor seems to proceed upon the premise that inasmuch as there are no such licensees in East Orange, and inasmuch as he is a fit person for such license, the license should be issued. We cannot agree with this view. It is clearly the duty and right of the licensing authority to weigh the evidence presented and all of the circumstances and conclude whether there is public need and whether such license will be in the public interest. From our study of the proofs submitted, we are of opinion that the refusal was warranted and within the reasonable discretion of the Commissioner.

The application for a writ of certiorari is denied.

Filed February 11, 1947.

9. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - FALSE STATEMENT IN APPLICATION - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
 WILLIAM HENRY)
 725 Montgomery Street)
 Jersey City 6, N. J.,)
 Holder of Plenary Retail Consumption License C-33, issued by the Board of Commissioners of the City of Jersey City.)
 -----)

CONCLUSIONS AND ORDER

William Henry, Defendant-licensee, Pro Se.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded non vult to charges alleging (1) that he possessed illicit alcoholic beverages at his licensed premises, in violation of R. S. 33:1-50; and (2) that he falsely answered "No" to a question on the application filed by him when he secured his current license, in violation of R. S. 33:1-25.

As to the first charge, on December 16, 1946 an investigator of the State Department of Alcoholic Beverage Control seized a 4/5 quart bottle labeled "Black & White Blended Scotch Whisky" and a 4/5 quart bottle labeled "Johnnie Walker Red Label Blended Scotch Whisky" when his preliminary tests indicated that the contents thereof were not genuine as labeled. Subsequent analyses by the Department chemist confirmed the results of the preliminary tests and determined that said bottles had been "refilled".

The defendant disclaims any personal knowledge of or implication in the illegal activity of "refilling", pleading that he is absent from the tavern often because of poor health. Personal knowledge of or participation in the actual "refilling" are not necessary ingredients to the violation. The mere possession of the illicit alcoholic beverages warrants a finding of guilt to the charge. Re Barrale, Bulletin 705, Item 5.

As to the second charge, the defendant failed to disclose a suspension of license which was imposed upon him in December, 1935.

The minimum suspension on the first charge is fifteen days, Re Nurse, Bulletin 680, Item 7, and that on the second charge five days. I shall, therefore, suspend the license for a period of twenty days and remit five days because of the plea, leaving a net suspension of fifteen days.

Accordingly, it is, on this 13th day of February, 1947,

ORDERED that Plenary Retail Consumption License C-33, issued by the Board of Commissioners of the City of Jersey City to William Henry for premises 725 Montgomery Street, Jersey City, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. February 24, 1947, and terminating at 2:00 a.m. March 11, 1947.

ERWIN B. HOCK
Deputy Commissioner.

10. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 ANGELO FORTE
 21 Jewett Avenue
 Jersey City 4, N. J.,
 Holder of Plenary Retail Consumption License C-247, issued by the Board of Commissioners of the City of Jersey City.

CONCLUSIONS AND ORDER

 Halpern & Halpern, Esqs., by Michael Halpern, Esq., Attorneys for Defendant-licensee.
 William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded non vult to a charge that he possessed illicit alcoholic beverages at his licensed premises, in violation of R. S. 33:1-50.

On January 8, 1947, an investigator of the State Department of Alcoholic Beverage Control seized one 4/5 quart bottle labeled "Haig & Haig Five Star Liqueur Blended Scots Whisky" and one 4/5 quart bottle labeled "Schenley Reserve Blended Whiskey" when his field tests disclosed that the contents of said bottles were not genuine as labeled. Subsequent analyses by the Department chemist disclosed that said bottles contained alcoholic beverages not genuine as labeled.

Defendant has no prior adjudicated record. I shall, therefore, suspend the license for the minimum period of fifteen days, Re Nurse, Bulletin 680, Item 7, and remit five days because of the plea, Re Gelb, Bulletin 741, Item 8, leaving a net suspension of ten days.

Accordingly, it is, on this 14th day of February, 1947,

ORDERED that Plenary Retail Consumption License C-247, issued by the Board of Commissioners of the City of Jersey City to Angelo Forte, for premises 21 Jewett Avenue, Jersey City, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. February 24, 1947, and terminating at 2:00 a.m. March 6, 1947.

ERWIN B. HOCK
Deputy Commissioner.

11. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PREVIOUS WARNING - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MARIE MICHEL)
T/a THE KITCHEN)
507-509 S-41 Highway)
Maple Shade Township)
Burlington County, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Township Committee of Maple Shade.)
-----)

Powell and Parker, Esqs., by Robert W. Criscuolo, Esq.,
Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

The defendant has pleaded non vult to the following charge:

"On December 24, 1946, you possessed illicit alcoholic beverages at your licensed premises, viz., one 4/5 quart bottle labeled 'Harvey's Special Blended Scotch Whisky', one 4/5 quart bottle labeled 'Teacher's Highland Cream Perfection Blended Scotch Whisky', one 4/5 quart bottle labeled 'The Blended Scotch Whisky of the White Horse Cellar', one 4/5 quart bottle labeled 'Gold Bar Extra Quality Martins V. V. O. Brand Special Liqueur Blended Scotch Whisky', one 4/5 quart bottle labeled 'Scotch Whisky Johnnie Walker Red Label', one 4/5 quart bottle labeled 'Usher's Green Stripe Blended Scotch Whisky', and one 4/5 quart bottle labeled 'White Label Blended Scotch Whisky', all of which bottles contained alcoholic beverages not genuine as labeled; such possession being in violation of R. S. 33:1-50."

On December 24, 1946, an ABC investigator seized the seven bottles in question when preliminary tests indicated that the contents thereof were not genuine as labeled. Subsequent analyses by the Department chemist established that the contents of the seized bottles were not genuine as labeled.

Defendant has no prior adjudicated record. However, on February 2, 1943, after discovery of a bottle of whiskey on defendant's premises which tested under proof, a warning in writing was given to defendant that said violation would be taken into account in determining the proper penalty if disciplinary proceedings were thereafter instituted against him for possession of illicit liquor. The minimum suspension in a case involving seven bottles is thirty days where no warning has been given. Re Harris, Bulletin 745, Item 9. Under the circumstances, I shall suspend the license for a period of thirty-five days, less five days for the plea entered herein, making a net suspension of thirty days.

Accordingly, it is, on this 13th day of February, 1947,

ORDERED that Plenary Retail Consumption License C-4, issued by the Township Committee of Maple Shade to Marie Michel, t/a The Kitchen, for premises 507-509 S-41 Highway, Maple Shade Township, be and the same is hereby suspended for a period of thirty (30) days, commencing at 2:00 a.m. February 17, 1947, and terminating at 2:00 a.m. March 19, 1947.

ERWIN B. HOCK
Deputy Commissioner.

12. STATE LICENSES - NEW APPLICATIONS FILED.

Henry Casperaites and Albert W. Casperaites
T/a Casper's South Jersey Express
806 Arctic Avenue
Atlantic City, N. J.

Application for Transportation License filed February 7, 1947.

Silvio Ferretti
1184 Edgewater Ave.
Ridgefield, N. J.

Application for Plenary Winery License filed February 7, 1947.

Helm's New York-Pittsburgh Motor Express, Inc.
Grove and Nelson Streets
Elizabeth, N. J.

Application for Transportation License filed February 11, 1947.

O'Keefe's Inc.
1010-1012 Ellicott Square Building
Buffalo, New York.

Application for Limited Wholesale License filed February 14, 1947.

Erwin B. Hock
Deputy Commissioner.