

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

BULLETIN 732

OCTOBER 3, 1946.

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

BULLETIN 732

OCTOBER 3, 1946.

1. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against

VINCENT PAUL MANNING  
T/a 78 CLUB  
15 New Street  
Sea Bright, N. J.;

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-14, issued by the Mayor and Council of the Borough of Sea Bright.

Vincent Paul Manning, Defendant-licensee, Pro se.  
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

Defendant pleaded non vult to a charge alleging that he possessed one 4/5 quart bottle labeled "Black & White Blended Scotch Whisky" and one 4/5 quart bottle labeled "White Label Blended Scotch Whisky", both of which bottles contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

During an inspection of defendant's premises on August 21, 1946, an ABC agent tested twenty-six bottles of the open stock of liquor and seized the two bottles in question. Analysis by the ABC chemist disclosed that the bottles contained alcoholic beverages not genuine as labeled.

Defendant denied any knowledge of the violation. However, a licensee must be held strictly responsible for any "refills" found in his stock of liquor. Re Kurian, Bulletin 517, Item 2.

Defendant has no previous adjudicated record. Therefore, I shall suspend his license for a period of fifteen days. Re Delaney, Bulletin 680, Item 12.

Accordingly, it is, on this 26th day of September, 1946,

ORDERED, that Plenary Retail Consumption License C-14, issued by the Mayor and Council of the Borough of Sea Bright to Vincent Paul Manning, t/a 78 Club, for premises at 15 New Street, Sea Bright, be and the same is hereby suspended for a period of fifteen (15) days. In accordance with notice of August 23, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK  
Deputy Commissioner.

2. APPELLATE DECISIONS - HOSTS, INC. v. POINT PLEASANT BEACH.

HOSTS, INC., )  
 )  
 Appellant, )  
 )  
 -vs- )  
 )  
 MAYOR AND COUNCIL OF THE )  
 BOROUGH OF POINT PLEASANT BEACH, )  
 )  
 Respondent. )  
 ----- )

ON APPEAL  
CONCLUSIONS AND ORDER

Charles S. Smith, Esq., Attorney for Appellant.  
W. Douglas Blair, Esq., Attorney for Respondent.

Appellant appeals from the denial of its application for a plenary retail consumption license for premises known as Beacon Hotel, located at the corner of Sea Avenue and Ocean Avenue, Point Pleasant Beach.

The answer filed herein recites that the application was denied because the granting thereof would be in violation of Paragraph 2 of Section 4 of an Ordinance of the Borough of Point Pleasant Beach adopted September 12, 1940. The indicated paragraph reads as follows:

"No Plenary Retail Consumption License, excepting renewals of licenses presently outstanding, shall be issued for or transferred to any portion of that area of the Borough of Point Pleasant Beach lying East of Ocean Avenue, the said Ocean Avenue extending from the Manasquan River southerly to the Borough of Bay Head."

At the hearing herein appellant admitted that its premises are located east of Ocean Avenue, but contended that the section of the ordinance recited above is unreasonable in itself or unreasonable as applied to appellant. It is unnecessary, however, to consider this contention of appellant for the reason hereinafter set forth.

It appears from a certified copy of the Borough ordinance referred to above that Section 1(a) thereof provides as follows:

"Plenary Retail Consumption Licenses shall be limited in number to ten (10) provided however that such limitation shall not affect the Plenary Retail Consumption Licenses presently issued or renewals or transfers of the same; no new Plenary Retail Consumption License shall be issued unless and until, by relinquishment, revocation or otherwise the number of Plenary Retail Consumption Licenses shall be less than ten (10) and then new Plenary Retail Consumption Licenses may only be issued until the number of ten (10) is reached."

The records of the Department of Alcoholic Beverage Control show that sixteen plenary retail consumption licenses have been issued and are now in existence in the Borough of Point Pleasant Beach. Hence, whatever the effect of Paragraph 2 of Section 4 of the ordinance, the issuance of the license in question is barred by the provisions of Section 1(a) of the ordinance unless the latter section is unreasonable.

In his brief filed herein, appellant argues that Section 1(a) of the ordinance is also unreasonable because appellant operates an hotel which discharges a public function, citing A.B.C. Holding Co. v. Newton, Bulletin 58, Item 11, and Latz v. Somers Point, Bulletin 146, Item 5. However, while there should be no discrimination against hotels, hotels are not entitled as of right to a liquor license. The test is public necessity and convenience -- not whether a given place is an hotel or not. Lincoln Avenue Corp. v. Wildwood, Bulletin 540, Item 2.

The evidence herein shows that appellant purchased the Beacon Hotel in June 1946. It has been testified that the hotel itself dates back to pre-Revolutionary time although the present building is only about twenty-five years old. Beacon Hotel has not been licensed for the sale of alcoholic beverages since Repeal. The proof concerning necessity and convenience consists of the testimony of the President of appellant corporation who testified that the hotel has fifty-five sleeping rooms and accommodates one hundred twenty-five guests. He also testified that many patrons have requested bar and liquor facilities and that frequently prospective guests have declined accommodations because of the absence thereof. The evidence herein demonstrates at most that a liquor license would serve the private interests of the present owners of the Beacon Hotel, but falls far short of showing that public necessity and convenience require an additional license in the Borough. Cf. Current v. Fredon, Bulletin 184, Item 1.

It should, perhaps, be noted that the issuance of a license to the Beacon Hotel is not barred by Chapter 147 of the Laws of 1946 if, as testified, the hotel contains at least fifty sleeping rooms. See Section 10. However, said Act is in addition to and not in exclusion of municipal regulations limiting the number of licenses (see Section 11), and the Borough's existing limitation ordinance contains no exception in favor of hotels containing fifty or more sleeping rooms.

Appellant has failed to sustain the burden of proof to show that respondent acted arbitrarily or unreasonably in denying its application for a license. Hence, the action of respondent is affirmed.

Accordingly, it is, on this 27th day of September, 1946,

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

ERWIN B. HOCK  
Deputy Commissioner.

3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

ANDY'S, INC. (a corporation) )  
7 Albany Street )  
New Brunswick, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-3, issued by the Board of Commissioners of the City of New Brunswick. )  
----- )

Defendant-licensee, by Albert A. Lagowitz, President.  
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded non vult to charges alleging that it sold, served and delivered alcoholic beverages to minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The file herein discloses that on September 19, 1946, two ABC agents observed a waitress in defendant's premises serving a glass of beer to each of three soldiers who were seated at a table in the service room. The waitress asked one of the soldiers if he was of full age and, when he replied in the negative, the waitress removed his glass of beer and placed it in front of one of the other soldiers. Subsequent investigation disclosed that all of the soldiers were minors, and that they had been previously served with a round of beers without being questioned as to their respective ages. One soldier was seventeen years of age, and the other two were eighteen years of age.

Defendant has no prior adjudicated record. The minimum penalty for sales to minors where no aggravating circumstances appear consists of a suspension of the license for a period of ten days. Since three minors -- one of whom was seventeen years of age -- were involved in this case, I shall suspend the license for a period of fifteen days, less five days for the plea, making a net suspension of ten days.

Accordingly, it is, on this 30th day of September, 1946,

ORDERED, that Plenary Retail Consumption License C-3, issued by the Board of Commissioners of the City of New Brunswick to Andy's, Inc. (a corporation), for premises 7 Albany Street, New Brunswick, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. October 7, 1946, and terminating at 2:00 a.m. October 17, 1946.

ERWIN B. HOCK  
Deputy Commissioner.

4. APPELLATE DECISIONS - ESSEX COUNTY RETAIL LIQUOR STORES ASSN. v. MONTCLAIR AND SUBURBAN BAR AND GRILL, INC. - ORDER REMANDING.

ESSEX COUNTY RETAIL LIQUOR STORES ASSN.,  
 Appellant,  
 -vs-  
 BOARD OF COMMISSIONERS OF THE TOWN OF MONTCLAIR, and SUBURBAN BAR AND GRILL, INC.,  
 Respondents

ON APPEAL  
O R D E R

Herman C. Silverstein, Esq., Attorney for Appellant.  
 George S. Harris, Esq., by John Ferguson, Esq., Attorney for Respondent, Town of Montclair.  
 Boyd, Dodd, Keer and Booth, Esqs., by Ernest F. Keer, Jr., Esq., Attorneys for Respondent, Suburban Bar and Grill, Inc.

This is an appeal from the transfer of the plenary retail consumption license held by the respondent, Suburban Bar and Grill, Inc., from premises 575 Bloomfield Avenue to premises 619-625 Bloomfield Avenue, Montclair, N. J.

The petition of appeal raises various technical objections to the manner in which the application for transfer was filed with the respondent Board of Commissioners. At the hearing, the respondent, Suburban Bar and Grill, Inc., indicated a desire to withdraw the transfer application and to file a new application therefor.

Accordingly, the respondent Board of Commissioners adopted a resolution on September 24, 1946 to the following effect:

"BE IT RESOLVED by the Board of Commissioners of the Town of Montclair, in the County of Essex, that the Commissioner of Alcoholic Beverage Control be requested to remand said matter to the Board of Commissioners so that the resolution previously passed in this matter may be rescinded without prejudice to the Suburban Bar & Grill, Inc., from making a new application for the transfer of this license."

Since no reason appears to the contrary, this appeal will be remanded to the respondent Board of Commissioners for further action consistent with law and the aforesaid resolution.

Accordingly, it is, on this 30th day of September, 1946,

ORDERED, that the proceedings herein be and the same are hereby remanded to the respondent, Board of Commissioners of the Town of Montclair, for its further consideration consistent with law and the aforesaid resolution.

ERWIN B. HOCK  
 Deputy Commissioner.

5. APPELLATE DECISIONS - SEGAL ET AL. v. CLIFTON ET AL.  
(CASES NOS. 1 AND 2).

Cases Nos. 1 and 2.  
SEYMOUR SEGAL, SEBASTIAN CROCIATA )  
and CLIFTON RETAIL PACKAGE DEALERS )  
ASSN., )

Appellants, )

-vs- )

MUNICIPAL COUNCIL OF THE CITY OF )  
CLIFTON and ANNIE BENGAFF, )  
t/a CLIFTON WINE AND LIQUOR STORE, )

Respondents )

ON APPEAL  
CONCLUSIONS AND ORDER

----- )  
Frank W. Shershin, Esq., Attorney for Appellants.  
John G. Dluhy, Esq., Attorney for City of Clifton.  
Donald G. Collester, Esq., Attorney for Respondent, Annie Bengaff.

These two appeals are, respectively, from the issuance of a plenary retail distribution license to respondent, Annie Bengaff, by respondent issuing authority for the fiscal year 1945-46 and from the renewal of said license for the present fiscal year. The premises in question are known as 795 Main Avenue, Clifton, New Jersey.

Appellants contend that (1) respondent Bengaff did not have sufficient control and possession of the premises sought to be licensed to warrant the issuance of the liquor license; and (2) there was no public need or convenience to be served by the issuance of the license to Bengaff.

Respondent Bengaff and Municipal Council of the City of Clifton, respectively, contend that the first appeal should be dismissed because appellants have been guilty of laches. The license was authorized to be issued by resolution of respondent issuing authority on December 4, 1945, and issued on the same day. The appeal was not filed from the issuance thereof until May 23, 1946. Respondents' contention must be sustained in view of the thirty-day statutory provision for filing of an appeal from an issuance of a liquor license (R. S. 33:1-22). A consideration of the merits of the cases likewise leads to the conclusion that the appeals should be dismissed.

There appears little dispute between the parties as to various facts, to wit, that the respondent Bengaff's application was approved by the respondent municipal issuing authority on December 4, 1945; that the premises for which the license was issued was then occupied by another business; and furthermore, that respondent Bengaff did not actually take physical possession of the premises until some time in April, 1946.

The main controversy is whether respondent Bengaff had a sufficient proprietary interest in the premises at 795 Main Avenue to warrant the issuance of the license.

John A. Celentano, co-owner of the property in question, testified that he had rented the premises to respondent Bengaff on or about October 3, 1945, at which time he received a deposit of \$25.00. A cancelled check, dated October 3, 1945, representing the aforesaid sum, was produced at the hearing by respondent Bengaff (Exhibit R-1). The former tenant, one Fred P. Duffy, testified that he was a month to month tenant and that he had been given notice to vacate the premises several months before Christmas of 1945. He stated that the only reason he did not move before December 1, 1945 was that a building being erected for his use was unfinished and not finally

completed until April, 1946, at which time he moved therein. Immediately thereafter respondent Bengaff moved into the premises vacated by Duffy and since that time has been conducting a package goods business.

There is no doubt in my mind that respondent Bengaff, by reason of her rental agreement with the landlord, had sufficient interest in the licensed premises to warrant the issuance of the license to her. The delay in obtaining physical possession of the premises until April, 1946 could not in any manner be attributed to her. Therefore, this objection, in view of the circumstances herein, appears to be without merit. Cf. Yacula v. Jersey City, Bulletin 144, Item 7.

Appellants also argue that there are sufficient liquor outlets in the immediate vicinity to supply the wants of the people in that section. There is no dispute, however, that Main Avenue is one of the business thoroughfares of the city. The nearest package store on Main Avenue is about 600 feet from Bengaff's premises. There is evidence that there are mills and factories nearby.

The number of licensed places to be permitted in any particular area is a matter confided to the sound discretion of the issuing authority. Santoriello v. Howell, Bulletin 252, Item 8; Sudol v. Wallington, Bulletin 267, Item 10; Pitman v. Pemberton, Bulletin 277, Item 6; Boody v. Gloucester, Bulletin 300, Item 11; Smith v. Winslow, Bulletin 334, Item 1; Alpert v. Asbury Park, Bulletin 380, Item 2; Winslow v. Pennsauken, Bulletin 401, Item 11; Bodrato v. Northvale, Bulletin 433, Item 1. The burden rests with appellants to show that such discretion was unreasonably exercised. In an effort to meet such burden appellants produced three witnesses, all liquor licensees, who testified the needs or convenience of the people in the neighborhood of Bengaff's premises did not warrant the issuance of an additional license. The members of the respondent, Municipal Council of the City of Clifton, appear to have thought otherwise.

My function on appeals of this type is not to substitute my personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of my personal view on the subject. Rafalowski v. Trenton, Bulletin 155, Item 8; Northend Tavern, Inc. v. Northvale, Bulletin 493, Item 5; Petti v. Bayonne, Bulletin 564, Item 7; Mulcahy et al. v. Maplewood et al., Bulletin 658, Item 4.

Under the circumstances of this case, I am satisfied that the members of the respondent, Municipal Council of the City of Clifton, did not abuse their discretionary power in granting a license to respondent Bengaff. Therefore, I cannot hold that the action of the respondent issuing authority is so unreasonable as to require a reversal of its action.

The action of the respondent Municipal Council is hereby affirmed.

Accordingly, it is, on this 30th day of September, 1946,

ORDERED, that the appeals herein be and the same are hereby dismissed.

ERWIN B. HOCK  
Deputy Commissioner.

6. DISCIPLINARY PROCEEDINGS - FAILURE TO FILE WRITTEN NOTICE OF CHANGE IN FACTS AS SET FORTH IN APPLICATION - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against RALPH, ANTHONY F. and JAMES PISACANE T/a PISACANE WINE COMPANY 168-170 Lyon Street Paterson, N. J.,

CONCLUSIONS AND ORDER

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Holders of Wine Wholesale License No. WW-33 issued by the State Department of Alcoholic Beverage Control.

Leo J. Berg, Esq., Attorney for Defendant-licensees.  
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

Defendants have pleaded non vult to the following charge:

"While you and Nicholas Segro were the joint holders of a wholesale wine license in New Jersey during the 1945-46 licensing term, you, when a change occurred in the facts as set forth in your application for such license, failed to give the State Department of Alcoholic Beverage Control written notice of the change within ten days of its occurrence, this change being the fact that on February 13, 1946 Nicholas Segro became interested in a retail liquor concern (a tavern) at 443 Third Street, Carlstadt, N. J. as a part owner thereof; your failure to give the aforesaid notice being in violation of R. S. 33:1-34."

From April 1945 until some time subsequent to February 13, 1946, defendants and one Nicholas Segro were partners, trading as Pisacane Wine Company, holders of a wine wholesale license. On February 13, 1946, Nicholas Segro and one Anthony Marino obtained a transfer of a plenary retail consumption license for premises at 443 Third Street, Carlstadt, and engaged in the sale of alcoholic beverages at retail. See Re Muzyka & Segro, Bulletin 730, Item 14. Admittedly no notice of this change of facts was given to the Department of Alcoholic Beverage Control as required by R. S. 33:1-34. Subsequently Nicholas Segro withdrew from the partnership which had been conducting the wine wholesale business and, at least since July 1, 1946, he has apparently had no interest in said wine wholesale license.

In attempted mitigation the three remaining partners allege that they had no knowledge that Nicholas Segro had obtained an interest in retail license. This contention is weakened somewhat by the fact that an invoice dated February 22, 1946 covers various items of alcoholic beverages sold by Pisacane Wine Company to the retail premises located at 443 Third Street, Carlstadt. This invoice shows that the sale was made to "A. Marino and N. Segro." Subsequent sales were made by Pisacane Wine Company to the licensed premises in Carlstadt during the months of April and May 1946. In any event, the knowledge acquired by one member of the partnership is binding upon all the members of the partnership. Hence I must find defendants guilty as charged.

In fixing a period of suspension I have considered the fact that the licensees have no prior adjudicated record and that they cooperated wholeheartedly with the representatives of the Department of

Alcoholic Beverage Control during the course of this investigation. I shall suspend their license for a period of ten days, less five days for the non vult plea, making a net suspension of five days.

Accordingly, it is, on this 26th day of September, 1946,

ORDERED, that Wine Wholesale License No. WW-33, issued by the State Department of Alcoholic Beverage Control to Ralph, Anthony F. and James Pisacane, t/a Pisacane Wine Company, for premises 168-170 Lyon Street, Paterson, be and the same is hereby suspended for five (5) days, commencing at 7:00 a.m. October 14, 1946, and terminating at 7:00 a.m. October 19, 1946.

ERWIN B. HOCK  
Deputy Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - LICENSE SUSPENDED FOR A PERIOD OF 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

GOLD'S DRUG STORES (a corp.),  
T/a GOLD'S DRUG STORES  
342 Jackson Avenue  
Jersey City 5, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Distribution License D-32 issued by the Board of Commissioners of the City of Jersey City.

Defendant-licensee, by Herbert A. Gold, President.  
William F. Wood, Esc., appearing for Department of Alcoholic Beverage Control.

Defendant pleaded non vult to charges which alleged, in substance, that (1) it sold a pint of Southern Comfort Liqueur below the minimum consumer price published in Bulletin 708, in violation of Rule 6 of State Regulations No. 30, and (2) in its application filed for the current fiscal year it failed to disclose that its license had been suspended by the State Commissioner of Alcoholic Beverage Control for five days, effective November 27, 1944, for sale of an alcoholic beverage below the established minimum consumer price, such suppression being in violation of R. S. 33:1-25.

As to (1): On August 7, 1946, an ABC agent purchased in defendant's premises a pint bottle of Southern Comfort for the sum of \$3.59. The minimum consumer price for this item on said date was \$3.71. See Bulletin 708, effective May 6, 1946. The agent reported that the item had been displayed in a show-window and that it bore a price tag of \$3.59.

In alleged mitigation defendant states that, shortly before the violation occurred, there had been a change of managers in its Jackson Avenue store and that the new manager had apparently failed to comply with written instructions issued by the offices of defendant corporation, by which instructions the managers of defendant's various stores were notified that the minimum resale price of the item in question was \$3.71, effective May 6, 1946. As further evidence of good faith, defendant alleges that the item was advertised in the newspapers at \$3.71, and states that the violation occurred because a price tag attached to the bottle in question had not been changed after the item was listed in Bulletin 708.

As to charge (2): Defendant alleges that the failure to disclose the prior suspension was inadvertent and that it resulted from the fact that the information contained in the application for the prior fiscal year had been copied in the application filed for the current fiscal year.

As indicated above, defendant has a prior adjudicated record for a similar violation at its Jackson Avenue store. See Bulletin 640, Item 9. It may well be, as defendant contends, that, so far as the Fair Trade violation is concerned, it had no intent to "chisel" and that it did not deliberately suppress a material fact in its application for the license. Nevertheless, a violation of the Fair Trade Regulations is serious even if the violation is due only to carelessness. Licensees must also learn to answer all questions in the application fully and frankly. Under the circumstances of this case, I shall suspend defendant's license on both charges herein for a period of twenty-five days, less five days for the plea, making a net suspension of twenty days.

Accordingly, it is, on this 30th day of September, 1946,

ORDERED, that Plenary Retail Distribution License D-32, issued by the Board of Commissioners of the City of Jersey City to Gold's Drug Stores (a corp.), t/a Gold's Drug Stores, for premises 342 Jackson Avenue, Jersey City, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. October 8, 1946, and terminating at 2:00 a.m. October 28, 1946.

ERWIN B. HOCK  
Deputy Commissioner.

8. PRACTICES DESIGNED TO UNDULY INCREASE CONSUMPTION OF ALCOHOLIC BEVERAGES - TEN CENT BEERS FOR FIVE CENTS ON TUESDAYS AND FRIDAYS - FORBIDDEN.

September 30, 1946

Gentlemen:

We note that you have been advertising in the newspapers, and also by signs inside your premises, that your 10¢ glasses of beer will be sold for 5¢ on Tuesdays and Fridays from 9:00 a.m. until closing.

This method of business is improper at taverns. Promotional schemes to lure patrons into taverns by choosing certain hours or days when they may get drinks free or at a cheaper price can, in general, only lead to harm to the industry and to sound control.

Hence, schemes of giving away alcoholic beverages on "opening day" (Re Advertising, Bulletin 314, Item 4) or on "Saturday night from 9 to 10" (Re Lipitz, Bulletin 372, Item 2) have been ruled out by the Department.

Likewise, the Department has disapproved a scheme whereby, on every purchase of a drink of beer during certain hours, the patron was to receive a coupon entitling him to another glass of beer immediately or during the same hours on another day (Re Marcus, Bulletin 359, Item 4) -- a scheme which, incidentally, is quite similar to yours in that under either scheme the patron during designated times may get two drinks of beer for what is normally the price of one in the tavern.

None of these schemes, yours included, may be allowed at taverns since they constitute practices unduly designed to increase the consumption of alcoholic beverages. I am glad to note that, on learning of the objectionable nature of your scheme, you immediately submitted a voluntary statement to the Department representing that you have discontinued it. However, to ensure its discontinuance, I hereby specially rule, under the provisions of R. S. 33:1-39, that you shall not resume or continue any such scheme or the advertising thereof.

Very truly yours,  
ERWIN B. HOCK  
Deputy Commissioner.

9. DISCIPLINARY PROCEEDINGS - ILLEGAL PURCHASE OF STOLEN ALCOHOLIC BEVERAGES BY RETAIL LICENSEE FROM NON-LICENSEE - LICENSE SUSPENDED FOR A PERIOD OF 60 DAYS.

In the Matter of Disciplinary Proceedings against )

CHARLES TOMARO )  
T/a CIRCLE BAR )  
15 West Main Street )  
Bound Brook, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-5, issued by the Mayor and Council of the Borough of Bound Brook. )  
----- )

Samuel Chiaravalli, Esq., Attorney for Defendant-licensee.  
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant pleads non vult to the following charge:

"On or about May 10, 1946, you, a New Jersey retail licensee, without authority of special permit purchased alcoholic beverages from a person not the holder of a New Jersey manufacturer's or wholesaler's license, which alcoholic beverages consisted of some 300 cases of stolen beer; your purchase of these alcoholic beverages being in violation of Rule 15 of State Regulations No. 20."

The file herein discloses that an employee of defendant purchased 300 cases of beer from a person who was not the holder of a New Jersey manufacturer's or wholesaler's license. Hence defendant, who is responsible in these proceedings for the acts of his agent performed within the apparent scope of the agent's authority, is guilty of violating Rule 15 of State Regulations No. 20. The question as to whether the beer was stolen is material only in fixing the period of suspension.

Defendant denies that he had knowledge that the 300 cases of beer was stolen property. The testimony of a member of the Prosecutor's staff of another county and that of an FBI agent seems to indicate otherwise.

The sworn testimony of these men discloses that defendant was confronted with the fact that the beer had been stolen in Atlantic City. At first, according to the testimony of these law enforcement officers, defendant emphatically denied knowledge that the beer had been stolen. Later, however, when told that his employee had admitted the entire transaction, including the illegal source of the 300 cases of beer, defendant broke down and confessed that he knew that the beer was "hot". The law enforcement officers further stated that the defendant told them that he "broke the bottles and burned the cartons".

No evidence was produced by the defendant to contradict in any manner whatsoever the testimony given by the witnesses who testified for the Department. The circumstances attending the transaction were such that any reasonably prudent person could not help but suspect that the seller had obtained possession of the merchandise by unlawful means. The facts in the present case are more aggravated than the facts in Re Flynn, Bulletin 726, Item 2, wherein the beer was purchased from another retailer.

If it were not for the fact that the defendant, who has been a licensee for approximately eleven years, has no previous adjudicated record, I might very well revoke the license. Under the circumstances, the license will be suspended for a period of sixty days. Cf. Re Mylor, Bulletin 535, Item 6; Re Gilmartin, Bulletin 616, Item 13; Re Slohada, Bulletin 631, Item 5; Re Stout, Bulletin 667, Item 7; Re Green, Bulletin 674, Item 7.

Defendant's possession of the beer resulted in his arrest on a charge of receiving stolen goods. These criminal proceedings are now pending. If the licensee is convicted, it may well be, since the crime of receiving stolen goods ordinarily involves moral turpitude, that he will thereby become disqualified from obtaining any liquor license thereafter. See R. S. 33:1-25. However, this question must await the actual outcome of the criminal proceedings.

Accordingly, it is, on this 30th day of September, 1946,

ORDERED; that Plenary Retail Consumption License C-5, issued by the Mayor and Council of the Borough of Bound Brook to Charles Tomaro, t/a Circle Bar, for premises 15 West Main Street, Bound Brook, be and the same is hereby suspended for a period of sixty (60) days, commencing at 2:00 a.m. October 7, 1946, and terminating at 2:00 a. m. December 6, 1946.

ERWIN B. HOCK  
Deputy Commissioner.

10. APPELLATE DECISIONS - BARLOW v. CRANBURY ET AL. - DISCONTINUED.

ROBERT S. BARLOW, )  
Appellant, )  
-vs- )  
TOWNSHIP COMMITTEE OF THE TOWNSHIP )  
OF CRANBURY, and HERMAN AARONSON, )  
t/a HALF ACRE INN, and CHARLES )  
WALMSLEY and ESTHER WALMSLEY, )  
t/a BARREL INN, )  
Respondents )

ON APPEAL  
ORDER OF DISCONTINUANCE

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Samuel Bard, Esq., Attorney for Appellant.  
Albert C. Barclay, Esq., Attorney for Respondents.

Appellant appealed from the action of respondent Township Committee whereby it granted a person-to-person transfer of a plenary retail consumption license from Charles Walmsley and Esther Walmsley to Herman Aaronson, and a place-to-place transfer of said license from premises located on Route 25 - Hightstown Circle to premises on Route 25, Cranbury-Half Acre Road, in the Township of Cranbury.

The attorney for appellant has requested that the appeal be discontinued and has submitted a formal stipulation of discontinuance consented to by the attorney for respondents.

Since no reason appears to the contrary,

It is, on this 2nd day of October, 1946,

ORDERED, that the within appeal be and the same is hereby discontinued.

ERWIN B. HOCK  
Deputy Commissioner.

11. APPELLATE DECISIONS - NUNZIATO v. MATAWAN.

OLIMPIA NUNZIATO, Administratrix )  
of the Estate of JOSEPH NUNZIATO, )  
Appellant, )

-vs-

TOWNSHIP COMMITTEE OF THE )  
TOWNSHIP OF MATAWAN, )  
Respondent )

ON APPEAL  
CONCLUSIONS AND ORDER

T. Frank Weigand, Esq., Attorney for Appellant.  
Lara W. Karkus, Esq., Attorney for Respondent.

This is an appeal from the refusal to renew a plenary retail consumption license for premises at 50 Girard Avenue, Matawan.

The answer herein alleges that renewal was denied, among other reasons, because appellant permitted upon the licensed premises lewdness, immoral activities, disturbances, unnecessary noises and other violations of the law, and permitted the premises to be conducted in such a manner as to become a nuisance.

By stipulation, a transcript of the testimony taken at two hearings before the local issuing authority was introduced into evidence at the hearing of the appeal, and additional testimony taken at said hearing.

At the outset it should be noted that there is insufficient evidence to support the charge that lewdness or immoral activities were permitted upon appellant's premises. One witness, who admitted that she is unfriendly to appellant, testified that more than two years ago she looked into the licensed premises and saw a girl pulling up her skirt and indecently exposing herself. A man, who is related to the last witness and who was vague and uncertain in his testimony, testified that he saw the same thing. At the time this incident is alleged to have occurred, the license was in the name of Joseph Nunziato, appellant's husband, who died in September, 1944. There is no evidence in the case that appellant's husband, or any employee of appellant's husband, saw this incident if it did occur on the licensed premises. This evidence is too vague and uncertain to warrant a denial of renewal, particularly in view of the fact that the incident is alleged to have occurred more than two years ago and prior to the time appellant took over the operation of the licensed business.

There is little, if any, evidence to show that any disturbances or brawls occurred upon the licensed premises. There is evidence by objectors that on various occasions they have seen intoxicated patrons leave the licensed premises; that some of these patrons have urinated upon the sidewalk, and that some of these patrons have used loud and indecent language. The attorney for appellant contends that his client is not responsible for conditions outside of his client's licensed premises. This contention is not entirely correct. "A license is a privilege. A licensee must keep his place and his patronage under control. When the exercise of his personal right becomes a nuisance to the community, public interest requires that the privilege terminate." Conte v. Princeton, Bulletin 139, Item 8; also cf. Repici v. Hamilton, Bulletin 201, Item 8. However, on behalf of appellant, numerous witnesses testified that the premises had

always been conducted in a proper manner. Thus, there is a serious dispute as to whether or not the premises were operated in an improper manner. Many of the objectors are unfriendly to appellant and all of them admitted that they had never made any complaint to appellant about the alleged unsatisfactory conditions on the outside of her licensed premises. Under these circumstances I conclude that the appellant, who is now on notice, should be given an opportunity to demonstrate that she can so conduct her premises that unsatisfactory conditions do not result either inside or outside of the licensed premises.

Further objections concerning the breaking of bottles in a nearby empty lot owned by appellant, parking of cars and the pumping of water from the cellar of appellant's premises, are not sufficient to warrant denial of renewal of the license. Since these practices appear to be objectionable to neighbors, it would be advisable for appellant to cease the practice of breaking bottles off the licensed premises and to make arrangements for more satisfactory parking and for the correction of the condition which permits the accumulation of water in the cellar of the premises.

There is an irreconcilable conflict in the testimony as to whether or not unnecessary noises were permitted on the licensed premises. Some objectors, who reside as far as five hundred feet away, testified that they are annoyed, during the early hours of the morning, particularly by the music from a juke box in appellant's premises, while many of appellant's witnesses who reside nearby testified that they are not annoyed by any noise or music. Two police officers testified that they visited appellant's premises on numerous occasions, as a result of noise complaints received from certain neighbors, and that the licensee, or her agents, cooperated with the police by shutting off the juke box. As to the music and noise, I think that the objectors, under the facts of this case, are entitled to some relief. Persons are entitled to rest and quiet during the sleeping hours of the night. Freeland v. Roselle, Bulletin 352, Item 5.

Respondent alleges as an additional reason for denial that appellant, as administratrix, has made no effort to dispose of the license as an asset of the decedent's estate. Joseph Nunziato died on September 27, 1944, and appellant was appointed administratrix of his estate on October 6, 1944. On October 11, 1944, the license in question was extended to her, as administratrix, for the balance of the said licensing year and was renewed in her name as administratrix of the estate of Joseph Nunziato for the 1945-46 fiscal year. The administratrix, who is of foreign birth, had not availed herself of legal aid or counsel until June 1946. She now insists that she will effect a settlement of the estate promptly and that she has retained an attorney for that purpose. Under the circumstances, I conclude that the administratrix should have some additional time to settle the estate. Cf. Beebe v. Glassboro, Bulletin 621, Item 7. The license may not be held by appellant in her capacity as administratrix beyond June 30, 1947. If an application for transfer is made during the current fiscal year, the local issuing authority must give proper consideration to the qualifications of the proposed transferee. It is my understanding that Olympia Nunziato is an alien who may not hold a liquor license as an individual.

Under all the circumstances, I shall reverse the action of respondent but, in order to prevent unnecessary noise, I shall modify the license by subjecting it to the condition set forth in the order herein.

This reversal applies merely to the renewal for the present fiscal year and is based principally on the fact that the alleged unsatisfactory conditions were not called to the attention of appellant or her employees. It implies no criticism of the members of respondent Township Committee, who gave all interested persons an opportunity to be heard. If unsatisfactory conditions result from further operation of appellant's place of business, the objectors may request respondent to institute disciplinary proceedings at any time and may object to renewal for the next fiscal year. In the alternative, respondent may act on its own initiative and institute disciplinary proceedings or refuse to renew for the next fiscal year.

Accordingly, it is, on this 1st day of October, 1946,

ORDERED, that the action of respondent in refusing to renew plenary retail consumption license for the year 1946-47 to Olimpia Nunziato, administratrix of the Estate of Joseph Nunziato, for premises 50 Girard Avenue, Matawan, is hereby reversed, but said license is hereby subjected to the following condition which shall be inserted in the license, viz.:

"That all music furnished by any form of mechanical device, or otherwise, shall cease at 11:00 P.M. on every day of the week and shall not be resumed before the opening hour on the following day."

ERWIN B. HOCK  
Deputy Commissioner.

12. STATE LICENSES - NEW APPLICATIONS FILED.

Carolina Beverage Co.  
109-111 N. South Carolina Ave.  
Atlantic City, N. J.  
Application for Plenary Wholesale License filed  
September 27, 1946.

Russell Carl Mueller  
701 Mount Vernon Street  
Camden, N. J.  
Application for State Beverage Distributor's License  
filed September 30, 1946.

Robinson-Lloyds Ltd.  
580 Fifth Ave.  
New York, N. Y.  
Application for Wine Wholesale License filed October 2, 1946.

*Erwin B. Hock*  
Deputy Commissioner.