

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

BULLETIN 763

MAY 21, 1947

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

BULLETIN 763

MAY 21, 1947.

1. APPELLATE DECISIONS - ALLUNARIO AND FOGG v. BLOOMINGDALE.

JOHN ALLUNARIO, JR. and )  
FRANK H. FOGG, )

Appellants, )

-vs-

ON APPEAL  
CONCLUSIONS AND ORDER

BOROUGH COUNCIL OF THE BOROUGH )  
OF BLOOMINGDALE, )

Respondent )

-----)

David Young, 3rd, Esq., Attorney for Appellants.

Peter Hofstra, Esq., by George Tierney, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from the respondent's refusal to grant the appellants' application for a plenary retail consumption license for premises at the south end of Main Street, Bloomingdale, Passaic County, N. J.

The municipality has a population of about 2600 inhabitants. For the past six years, nine consumption and three distribution licenses have been issued in the Borough. All of the distribution licenses and seven of the consumption licenses are located on Main Street, which extends about one and seven-tenths miles in the municipality. Within approximately half a mile of the proposed premises, which are situated at the southern tip of Main Street, there are seven licensed establishments, four of which hold consumption licenses.

The members of the Borough Council divided equally when voting on the application, and the deciding vote was cast by the Mayor. The four majority members testified that the municipality is sufficiently supplied with liquor outlets and that there is no necessity for adding a tenth tavern in the municipality, which now has one such license for less than each 300 residents. The mere recital of this ratio of consumption licenses to population renders it apparent that the position of the majority members of the Council is a sound one.

With respect to the question of the necessity for a tavern at the particular location applied for, the most that can be said, viewing the evidence in the light most favorable to the appellants, is that there is an honest difference of opinion on this issue. It cannot be said, however, that the view taken by the majority members is so unreasonable and arbitrary as to require a reversal of the Council's determination.

The decision of the respondent will be affirmed.

Accordingly, it is, on this 12th day of May, 1947,

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

ERWIN B. HOCK  
Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF REGULATIONS NO. 38 - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

MRS. AGNES PECORINO )  
T/a AGGIE'S SHACK )  
366 Main Street )  
Lodi, N. J., )

CONCLUSIONS AND ORDER

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

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Mrs. Agnes Pecorino, Defendant-licensee, Pro Se.  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to charges that (1) she sold alcoholic beverages in original containers for off-premises consumption, in violation of Rule 1 of State Regulations No. 38, and (2) she sold alcoholic beverages below the minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

On April 3, 1947, at about 10:55 p.m., an ABC investigator purchased for consumption off the licensed premises a pint bottle of "Lansdowne Reserve Blended Whiskey" for \$2.45. Rule 1 of State Regulations No. 38 prohibits such sale after 10:00 p.m. on any weekday. The minimum retail price of said item, as established in Bulletin 751, effective March 3, 1947, was \$2.46.

Defendant has no previous adjudicated record. I shall suspend her license on charge (1) for a period of fifteen days (Re Dallio, Bulletin 753, Item 12), and on charge (2) for a period of ten days (Re Brotman, Bulletin 741, Item 7). Five days will be remitted for the plea of non vult entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 12th day of May, 1947,

ORDERED that Plenary Retail Consumption License C-14, issued by the Mayor and Council of the Borough of Lodi to Mrs. Agnes Pecorino, t/a Aggie's Shack, for premises 366 Main Street, Lodi, be and the same is hereby suspended for a period of twenty (20) days, commencing at 4:00 a.m. May 21, 1947, and terminating at 4:00 a.m. June 10, 1947.

ERWIN B. HOCK  
Commissioner.

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

In the Matter of Disciplinary Proceedings against )  
 CLUB DIANA, a corporation )  
 2800 Springfield Avenue )  
 Union, N. J., )  
 Holder of Plenary Retail Consumption License C-42, issued by the )  
 Township Committee of the Township of Union. )

CONCLUSIONS AND ORDER

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 Bernard W. Vogel, Esq., Attorney for Defendant-licensee.  
 William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

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

On January 28, 1947, an ABC investigator seized a 4/5 quart bottle labeled "Four Roses Fine Blended Whiskey" and a 4/5 quart bottle labeled "Old Overholt Straight Rye Whiskey" when his field tests indicated that the contents of said two bottles were not genuine as labeled.

Subsequent analyses by the Department chemist disclosed that the characteristics of the whiskey in the seized bottles varied from the characteristics of genuine samples of the same products.

The officers of the corporate licensee deny any personal participation in or knowledge of the violation. They contend that a bartender who was discharged a short time previous to the discovery of the violation may have refilled the seized bottles. Licensees, however, are responsible for any "refills" found in their stock of liquor. Re Kurian, Bulletin 517, Item 2.

Defendant has no previous adjudicated record. I shall suspend its license for a minimum period of fifteen days, less five days for the plea entered herein, or a net suspension of ten days. Re Panageas, Bulletin 744, Item 14.

Accordingly, it is, on this 12th day of May, 1947,

ORDERED that Plenary Retail Consumption License C-42, issued by the Township Committee of the Township of Union to Club Diana, a corporation, 2800 Springfield Avenue, Union, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. May 19, 1947, and terminating at 2:00 a.m. May 29, 1947.

ERWIN B. HOCK  
Commissioner.

4. APPELLATE DECISIONS - DiCANIO v. ATLANTIC CITY.

CAMILLE DiCANIO and HELENE )  
DiCANIO, t/a ROMA RESTAURANT )  
& BAR, )

Appellants, )

-vs- )

BOARD OF COMMISSIONERS OF THE )  
CITY OF ATLANTIC CITY, )

Respondent )  
----- )

ON APPEAL  
CONCLUSIONS AND ORDER

George T. Naame, Esq., Attorney for Appellants.  
Leon Leonard, Esq., by Samuel Backer, Esq., Attorney for Respondent.  
Samuel Backer, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

This is an appeal from a resolution adopted by respondent whereby it denied appellants' application for permission to construct a cocktail bar and backbar, and to display bottled alcoholic beverages in a portion of appellants' premises known as 1015 Atlantic Avenue, Atlantic City.

This case arises because of the provisions of Sections 3(a), (b) and (c) of an ordinance of the City of Atlantic City, approved July 16, 1936, as amended August 10, 1939. The sections in question were approved by Commissioner Burnett on September 23, 1939, and provide as follows:

"3(a) Every application for a plenary retail consumption license or for a transfer of same, provided for by this ordinance, shall include a diagram clearly demonstrating the interior plan of the premises, and a detailed explanation of the nature of the business, as the same will be operated during the term of the license.\*\*\*

"3(b) If alcoholic beverages to be consumed off the licensed premises will be sold in the premises for which a retail consumption license or transfer is applied for, the place in such premises where the same will be displayed shall be specified.

"3(c) The interior plan, the nature of the business, and the place of display of alcoholic beverages to be consumed off the premises shall not be changed by the holder of a plenary retail consumption license without first applying for or receiving the permission of the Board of Commissioners. Such application for permission shall include the diagram, explanation and information provided for by paragraphs 3(a) and 3(b) hereof, and shall be in the same form and advertised in the same manner as application for license. Objections to the granting of such permission may be filed with the Clerk of the municipality and in such event, the same practice and procedure shall apply as in cases of objections filed to the granting of a license."

Appellants' premises consist of two stores known as 1013 and 1015 Atlantic Avenue, which have separate entrances but which have open passageways connecting the stores in the rear so as to constitute a single place of business. When appellants obtained their license by a person-to-person transfer from another licensee in April

1945, they filed a diagram of the premises. On September 26, 1946, pursuant to Section 3(c) of the ordinance, they applied to respondent for the permission which was subsequently denied (which denial is the subject of this appeal), and filed a diagram in accordance with the provisions of said section. A comparison of the original diagram and the diagram subsequently filed discloses no structural changes except that appellants seek permission to erect a cocktail bar and a backbar in the portion of the premises known as 1015 Atlantic Avenue.

Appellants concede the validity of Sections 3(a), (b) and (c) of the ordinance in question. They maintain, however, that they have complied with the requirements of the ordinance and that the denial of the permission to erect the cocktail bar and backbar is arbitrary and unreasonable. No reason for denial was given at the time the resolution was adopted by respondent, and no reason appears in the record why this portion, at least, of the relief sought was denied.

As to the place of display of alcoholic beverages: The record shows that appellants have sought permission to display bottled alcoholic beverages on shelving which was already erected in the portion of their licensed premises known as 1015 Atlantic Avenue when they obtained the transfer of the license. It is true that they have not been displaying bottled goods on these shelves since they took over the license, but that action was voluntary on their part and does not constitute a reason why such display should not be permitted. Under their plenary retail consumption license appellants may, of course, sell liquor in its original package, and may also sell for consumption on the premises. They may choose to do one or the other, or both. South Jersey Retail Liquor Dealers Assn. v. Burnett, 125 N.J.L. 105. The portion of the resolution which denies permission to display bottled alcoholic beverages in the portion of appellants' premises known as 1015 Atlantic Avenue appears to have been based solely upon the fact that certain plenary retail distribution licensees objected to the granting of said permission. That, of course, is not a valid reason and no other valid reason for denial appears.

The display of general advertising matter in the windows is not covered by the ordinance and, hence, does not require any permission from respondent.

It should be pointed out that this case does not involve any question concerning the need of an additional package goods store in the vicinity, or the question of the enlargement of an existing licensed premises so as to permit the establishment of a separate package goods department. The appellants herein have merely sought permission to rearrange their existing premises so as to carry on the privileges granted by their license, and the action of respondent in refusing them permission to do so appears to be arbitrary and unreasonable under the circumstances of this case. Hence I shall reverse the action of respondent.

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

ORDERED that the action of respondent herein be and the same is hereby reversed, and appellants herein are hereby granted permission to construct a cocktail bar and backbar in accordance with the diagram filed on September 26, 1946, and to display bottled alcoholic beverages upon the existing shelving in that portion of appellants' premises known as 1015 Atlantic Avenue, Atlantic City.

ERWIN B. HOCK  
Commissioner.

5. DISCIPLINARY PROCEEDINGS - "FRONT" - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF LICENSE - PRIOR RECORD AS TO "FRONT" BY BENEFICIAL OWNER OF LICENSE - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against )  
 FRANK HAHON )  
 Union Avenue )  
 Bridgewater Township )  
 P.O. R.D. 2, Somerville, N.J., )  
 Holder of Plenary Retail Distribution License D-1, issued by the )  
 Township Committee of the Township of Bridgewater, and transferred )  
 during the pendency of these proceedings to )  
 GEORGE HAHON )  
 for the same premises. )  
 - - - - - )

CONCLUSIONS AND ORDER

Leon Gerofsky, Esq., Attorney for Defendant-licensee.  
 William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult to the following charges:

"1. In your application dated June 3, 1946, filed with the Township Committee of Bridgewater Township, upon which you obtained your current plenary retail distribution license, you falsely stated 'No' in answer to Question 30, which asked: 'Has any individual...., other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?', whereas in truth and fact George Hahon had such an interest in that he was the real owner of the said business; such false statement being in violation of R. S. 33:1-25.

"2. From February 26, 1946 until the present time, you knowingly aided and abetted George Hahon to exercise, contrary to R. S. 33:1-26, the rights and privileges of your plenary retail distribution license, thereby yourself violating R. S. 33:1-52."

The file herein discloses that Frank Hahon returned from military service in October 1945, obtained the license in question in February 1946, and that operation under the license began in May 1946.

Frank Hahon is the son of George Hahon.

It appears that the son was employed elsewhere and knew nothing of the details of the business which was operated by his father. The proceeds of the business were deposited in a bank account in the son's name but the father held a power of attorney to draw the monies deposited in the account. Both father and son admitted in written statements that the business, in fact, belonged to the father.

Since the institution of these proceedings, the license has been transferred to George Hahon for the purpose of correcting the illegal situation.

As to penalty: It appears that approximately six years ago George Hahon, who then lacked the necessary residential qualifications, had operated licensed premises through various "fronts". In the Conclusions and Order entered therein Commissioner Driscoll, with reference to George Hahon, stated "\*\*\* that one who, not once but on two separate occasions, deliberately employs a subterfuge to conceal his illegal interest in the liquor business is, in my opinion, not a proper person to be associated with the alcoholic beverage industry." Re Blake, Bulletin 484, Item 6. I fully concur, particularly in view of the instant infraction. I therefore shall revoke the license now held by George Hahon, effective immediately.

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

ORDERED that License D-1, issued by the Township Committee of the Township of Bridgewater to Frank Hahon and transferred to George Hahon, for premises on Union Avenue, Bridgewater Township, be and the same is hereby revoked, effective immediately.

ERWIN B. HOCK  
Commissioner.

6. APPELLATE DECISIONS - NUNZIATO v. MATAWAN.

|                           |   |                       |
|---------------------------|---|-----------------------|
| JOHN J. NUNZIATO,         | ) |                       |
| Appellant,                | ) |                       |
| -vs-                      | ) | ON APPEAL             |
| TOWNSHIP COMMITTEE OF THE | ) | CONCLUSIONS AND ORDER |
| TOWNSHIP OF MATAWAN,      | ) |                       |
| Respondent                | ) |                       |

Joseph H. Lerner, Esq., Attorney for Appellant.  
Ezra W. Karkus, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license for premises located at 91 Lower Main Street, Township of Matawan.

Appellant contends that the action of respondent was erroneous because (1) there was no lawful protest made against the granting of the license, (2) he was discriminated against for political reasons, and (3) he presented a petition signed by 60 persons who signified that they were in favor of the granting of the license.

Respondent's Answer sets forth that appellant's application was denied because there are already sufficient licensed premises in the section of the municipality wherein appellant's proposed premises are located.

At the outset, I shall discuss grounds (1) and (2), respectively, mentioned in the petition as reasons for reversal of respondent's determination. Although no written objections were filed before the local issuing authority, the members thereof are nevertheless under a duty to investigate and determine whether the application should be granted and to reach a decision as a result of their independent investigation. Cf. Delbono v. New Brunswick, Bulletin 322, Item 12. This appears to have been done by respondent in the instant case. The petition mentioned as ground for reversal by appellant was not

marked as an exhibit during the hearing of this appeal. Assuming that said petition had been presented before the local issuing authority, the weight to be accorded to the petition is entirely within the discretion of the Township Committee. Cf. Re Powell, Bulletin 59, Item 15.

Appellant testified that he spoke to John Marz, Jr., Chairman of the Township Committee, on several occasions with reference to the granting of the license in question and that Committeeman Marz promised that he would receive favorable action on his application. Appellant's contention, however, that he incurred the expense of constructing the building on the strength of the promise made by Committeeman Marz is not supported by the record. Appellant admits that he started construction of the premises in March 1946, some three weeks before speaking to Committeeman Marz concerning the matter. Appellant filed his application for a license on October 24, 1946, at which time the building to be used as the licensed premises was still incomplete.

Committeeman Marz admitted that appellant had spoken to him on several occasions relative to his application for a liquor license but that he had advised appellant that he "could not commit the committee." I might add, however, that the alleged promise of Committeeman Marz, even if true, is nevertheless incompetent to limit the freedom of the full Township Committee when passing upon any application before it. Cf. Pergola v. Jamesburg, Bulletin 398, Item 6.

The right of a municipality to deny an application where the granting thereof would result in the existence of too many licensed premises in said municipality is well settled. Bumball v. Burnett, 115 N.J.L. 254. Considering the fact that there are twelve plenary retail consumption licenses and three plenary retail distribution licenses in the Township of Matawan, which has a population of 2,633 according to the Federal census of 1940, it cannot be said that the refusal to issue another license is unreasonable.

The burden of proof rests with appellant to show that there was an actual need for a plenary retail consumption license at his present location. I am satisfied that appellant has utterly failed in this respect.

In view of the facts adduced at the instant hearing, it is quite apparent that the denial of the application by the local issuing authority was neither arbitrary nor unreasonable, nor do I find any evidence to substantiate appellant's contention that the decision rendered by the local issuing authority was motivated by political reasons. The action of the respondent is therefore affirmed.

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

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

ERWIN B. HOCK  
Commissioner.

7. DISCIPLINARY PROCEEDINGS - PETITION TO REDUCE PERIOD OF SUSPENSION DENIED - EFFECTIVE DATES FIXED FOR SUSPENSION PREVIOUSLY IMPOSED.

In the Matter of Disciplinary Proceedings against )

SILVER DOLLAR, INC. )  
69-71 Albany Street )  
New Brunswick, N. J., )

On Petition  
O R D E R

Holder of Plenary Retail Consumption License C-4 issued by the Board of Commissioners of the City of New Brunswick. )  
----- )

BY THE COMMISSIONER:

On April 7, 1947, an order was entered herein suspending defendant's license for a period of sixty days, commencing April 14, 1947, and terminating June 13, 1947. Re Silver Dollar, Inc., Bulletin 758, Item 10.

On April 9, 1947, after defendant had requested a stay because it intended to apply for a writ of certiorari, an Order was entered herein staying the suspension previously imposed until the entry of a further order.

Defendant has now filed a petition which sets forth that defendant has decided not to make application for writ of certiorari and wherein defendant requests a reduction of the period of suspension. The petition recites that the sixty-day suspension will impose an undue hardship on seven employees of the defendant. While I sympathize with any innocent employees, the fact that employees may suffer is not a good reason for reducing the period of suspension. Cf. Re Jacobs, Bulletin 316, Item 8. The petition also recites that the licensed premises have in the past been conducted in an orderly manner.

A review of the evidence in this case satisfies me that the sixty-day suspension was fully warranted. The fact that defendant had no prior adjudicated record was considered in fixing the period of suspension. The petition is, therefore, denied.

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

ORDERED that the sixty-day suspension of License C-4 heretofore imposed herein shall commence at 2:00 a.m. May 26, 1947, and continue in effect for the balance of its term expiring at midnight June 30, 1947; and it is further

ORDERED that, if any license be issued to this licensee, or to any other person for the premises in question for the fiscal year 1947-48, such license shall remain under suspension until 2:00 a.m. July 25, 1947.

ERWIN B. HOCK  
Commissioner.

8. APPELLATE DECISIONS - KOVEN ET ALS, v. POMPTON LAKES AND HERBERT L. KLEIN.

HAROLD E. KOVEN, ISIDORE BLOOM,  
ISRAEL WEINSTEIN, and ANNA  
WEINSTEIN,

Appellants,

-vs-

BOROUGH COUNCIL OF THE BOROUGH  
OF POMPTON LAKES, and HERBERT L.  
KLEIN, trading as KLEIN'S  
DELICATESSEN AND LIQUOR STORE,

Respondents

ON APPEAL  
CONCLUSIONS AND ORDER

-----  
Grabow and Phelan, Esqs., by George S. Grabow, Esq. and Bernard G.  
Goldstein, Esq., Attorneys for Appellants.  
Nathan Bernstein, Esq., Attorney for Respondent Borough Council.  
Samuel S. Nochimson, Esq., Attorney for Respondent Herbert L. Klein.

BY THE COMMISSIONER:

This is an appeal from the issuance on November 5, 1946 of a plenary retail distribution license to Herbert L. Klein, t/a Klein's Delicatessen and Liquor Store, for premises known as 217 Wanaque Avenue, Pompton Lakes.

Appellants contend that the action of the respondent Borough Council was erroneous in that there was no public need for or convenience to be served by the issuance of another plenary retail distribution license in the Borough of Pompton Lakes.

Respondent Klein, holder of a plenary retail distribution license, also operates a delicatessen business in the premises. Appellant Bloom, a plenary retail distribution licensee, whose premises are located across the street from Klein's and as testified to by Arthur T. Riedel, the Borough Clerk, a distance of "75 or 80 feet" therefrom, is the proprietor of a dairy and delicatessen establishment. Appellant Koven operates a "package goods" liquor business exclusively on the same side of the street as Klein's and, according to the Borough Clerk's testimony, "between 50 and 60 feet" away. The Great Atlantic and Pacific Tea Company, the holder of a plenary retail distribution license, is on the opposite side of Wanaque Avenue with reference to Klein's store and approximately 100 feet distant.

There was testimony of the existence of other liquor establishments in the Borough some distance from the vicinity in question.

The Borough of Pompton Lakes, according to the 1940 Federal census, has an all-year-round population of 3189 persons. The testimony presented herein is in substantial agreement that there is a considerable increase in the population of the Borough and that of the surrounding municipalities during the summer season. The testimony produced herein is also in accord that Pompton Lakes is considered a business center, attracting shoppers from the adjoining communities. The license granted to Klein is the sixth of that class issued and outstanding at the present time.

Appellants contend that respondent Borough Council abused its discretion in issuing a license for premises in such close proximity to their premises. On many occasions I have indicated, however, that the number of licensed premises to be permitted in any particular area is a matter confided in the first instance to the sound

discretion of the local issuing authority and that the burden rests with appellants to show that such discretion has been unreasonably exercised. Cf. Mininsohn v. Lakewood et al., Bulletin 722, Item 11.

Were I a member of the respondent issuing authority, I might well have cast my vote against the granting of the instant application. However, there is room for latitude of opinion in this case. My function on appeals of the type now before me is not to substitute my opinion for that of the license issuing authority but, rather, to determine if reasonable cause exists for its opinion and, if so, to affirm irrespective of my personal view on the subject. Cf. Rafalowski v. Trenton, Bulletin 155, Item 8; Curry v. Margate City, Bulletin 460, Item 9; Mulcahy et al. v. Maplewood et al., Bulletin 658, Item 4.

The members of the Borough Council voted unanimously to grant the license to Klein. In the light of their determination that the issuance of the Klein license would serve a public need, and in view of the testimony relative to the business nature of the area where the premises are located, I am unable to conclude that the action of the Borough Council was unreasonable or disclosed an abuse of discretion.

The action of the Borough Council is affirmed.

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

ORDERED that the within appeal be and the same is hereby dismissed.

ERWIN B. HOCK  
Commissioner.

9. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - SALES OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS - HINDERING INVESTIGATION - FALSE STATEMENT IN APPLICATION - PENALTY IMPOSED IN CASE DECIDED HEREWITH.

In the Matter of Disciplinary Proceedings against )

EAST END REPUBLICAN LEAGUE )  
OF THE 12th WARD )  
300 N. 27th Street )  
Camden, N. J., )

CONCLUSIONS

Holder of Club License CB-16, )  
issued by the Municipal Board of )  
Alcoholic Beverage Control of the )  
City of Camden. )

-----  
Julius Sklar, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded not guilty to charges alleging (1) the sale, service and delivery of, and permitting the sale, service and delivery of, alcoholic beverages after 2:00 a.m. on Sunday, in violation of Section 5 of a local ordinance; and (2) hindering of an investigation by investigators of this Department, in violation of R. S. 33:1-35. Defendant pleaded non vult to charges alleging the

suppression in its application for its 1944-45 license of the fact that its license had been suspended for fifteen days, said suppression being in violation of R. S. 33:1-25.

Two agents of the Department of Alcoholic Beverage Control testified that they arrived at the club premises on Sunday, December 8, 1946, at about 12:30 p.m. After observing several persons enter and leave the licensed premises by the front entrance, they rang the front door bell. The door was slightly opened by one John F. Healy, later identified as the person in charge of the club premises at that time. The agents testified that, after they identified themselves, Healy refused at first to admit them. When the front door was finally opened, the agents entered. One agent testified that, while he was waiting at the door, he heard considerable activity inside and, when he entered, he observed several people inside sitting at various places around the main clubroom. He further stated that three or four men were standing by the door leading to a separate room used as a barroom, and one of the men slammed the door, which locked automatically. The agent asked Healy for the key to the barroom door, which Healy stated he did not have. The agents then proceeded to search the premises and found, under a desk and behind some chairs, three partly-filled, ice-cold bottles of beer and, on the floor, some wet rings, evidently made by bottles. The agents testified there were over thirty men in the club premises at the time of their visit.

John F. Healy testified for the defense. He stated that he was unable to open the door promptly because one of the agents had his foot in the opening and that it is necessary to close the door first and then remove the chain so that he could open it. He testified that he did not have the key to the barroom door and that the only persons who possessed such a key were the bartender and the president, and that neither of them was there on that particular Sunday. He admitted that the three bottles of beer had been discovered on the club premises by the agents, but stated that, to his knowledge, they had not been purchased on the Sunday in question. He denied that the barroom was open at any time on the day in question. His testimony is not consistent with the fact that the bottles were ice-cold.

From the testimony I am satisfied that the situation was exactly as described by the ABC agents. I am further satisfied that the barroom had been open and that an attempt was made to delay the entry of the agents until such time as the evidence had been removed or hidden. That the plan failed was not due to any lack of effort on the part of the members present. I find the defendant guilty on both counts.

Order fixing a penalty will be entered in disciplinary proceedings decided herewith.

ERWIN B. HOCK  
Commissioner.

Dated: May 14, 1947.

10. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - SALE OF ALCOHOLIC BEVERAGES TO NON-MEMBER -- FOURTH VIOLATION - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against )

EAST END REPUBLICAN LEAGUE OF THE 12th WARD )  
300 North 27th Street )  
Camden, N. J., )

CONCLUSIONS AND ORDER

Holder of Club License CB-16 issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden. )  
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Julius Sklar, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to the following charge:

"On April 19, 1947, you sold alcoholic beverages to a person not a bona fide member of your club or a bona fide guest of any such member, in violation of Rule 8 of State Regulations No. 7."

On April 19, 1947, at about 11:30 p.m., an ABC agent, who was not a member or the guest of a member of defendant club, entered the barroom of defendant's premises and purchased a bottle of beer from the person who was behind the bar. In an attempt to mitigate the offense, defendant alleges that the person who made the sale had been a trustee of the club for only a short period of time and that he did not know all of the members.

Defendant has a record of previous violations. Effective January 27, 1941, its license was suspended for fifteen days for permitting a slot machine on the premises, and for sales on Sunday. On May 28, 1945, its license was suspended for the balance of the term for sales during prohibited hours. In the case decided herewith, defendant was found guilty of charges alleging sales during prohibited hours, and hindering an investigation. In the same case it pleaded non vult to charges alleging the suppression of a material fact in its application for license.

Considering the prior record and the facts set forth herein, I have no alternative but to revoke defendant's license.

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

ORDERED that Club License CB-16, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to East End Republican League of the 12th Ward, for premises 300 North 27th Street, Camden, be and the same is hereby revoked, effective immediately.

ERWIN B. HOCK  
Commissioner.

11. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES AND EQUIPMENT IN SPEAKEASY IN PRIVATE RESIDENCE ORDERED FORFEITED - RETURN OF JUKE BOX DENIED FOR FAILURE OF OWNER TO INVESTIGATE SPEAKEASY OPERATOR WITH CRIMINAL RECORD.

In the Matter of the Seizure on January 11, 1947, of a quantity of alcoholic beverages, a music box and other articles, at premises occupied by William Reddick, located on Ivy Place, Potters Corner, in the Township of Raritan, County of Middlesex and State of New Jersey.

Case No. 7091

ON HEARING CONCLUSIONS AND ORDER

William J. Willis, Pro Se. Harry Castelbaum, Esq., appearing for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic beverages, a music box, and other articles, described in a schedule attached hereto, seized on January 11, 1947, at premises occupied by William Reddick, located on Ivy Place, Potters Corner, Raritan Township, N. J., constitute unlawful property and should be forfeited.

It appears that on January 10, 1947, an ABC agent, while checking a complaint of speakeasy activities in the vicinity, was admitted by Reddick to his home at the above address, a six-room bungalow, and there purchased alcoholic beverages from Reddick. It is a residence, and not a commercial establishment, and Reddick did not hold any license authorizing him to sell or serve alcoholic beverages, and the premises were not licensed for that purpose.

The agent left without disclosing his identity. Thereafter, ABC agents executed a search warrant for the premises on January 11, 1947, upon the basis of the unlawful sale of alcoholic beverages, at which time the agents seized a bottle of whiskey in the kitchen, another bottle of whiskey and twenty-eight bottles of beer in a bedroom, and the music box and other articles in another room.

Reddick was arrested and charged with the unlawful sale of alcoholic beverages, and possession of such beverages with intent to sell the same unlawfully in violation of the local ordinance and the Alcoholic Beverage Law. He pleaded guilty in the local police court and was fined \$100.00, and was also held for action by the Middlesex County Grand Jury. Reddick has a long criminal record, including convictions in this State in 1933 and 1944 for violating the liquor laws.

The evidence warrants the conclusion that the seized whiskey and beer were intended for unlawful sale at the premises, and are therefore illicit. R. S. 33:1-1(i). Such illicit alcoholic beverages, and the other articles seized therewith in the building, constitute unlawful property, subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

When the matter came on for hearing pursuant to R.S. 33:1-66, William J. Willis appeared, and seeks return of the music box. No one appeared to contest forfeiture of the balance of the property seized.

I have the discretionary authority to return the music box to Willis if he establishes to my satisfaction that he acted in good faith, and did not know or have any reason to suspect that his music box was in a speakeasy. R.S. 33:1-66(f). Also see Seizure Case No. 7044, Bulletin 760, Item 8.

Willis testified that a casual acquaintance told him that Reddick raised pigs and sold barbecue sandwiches, and was seeking a music machine; that he visited Reddick's home, looked at the place, and told Reddick that he could not use a machine; that it was not a suitable place, but nevertheless Reddick persuaded him to bring the machine there; that this occurred in July 1945, and later Willis or his nephew visited the premises about once a month to service the machine or collect the receipts.

All other music boxes owned by Willis are in commercial establishments, such as restaurants and beauty parlors. There was no restaurant equipment in Reddick's home, nor anything else to indicate that he served sandwiches or food, although Willis says that on some occasions he observed persons with sandwiches or soda there. Willis did not make any investigation whatsoever as to Reddick's character or background, or his activities at the premises.

I am compelled to deny Willis' application for return of the music box because he placed it in a private residence which, by his own admission, he recognized as an unusual place for such a machine and without an adequate check of what activities were being carried on there. Willis did not investigate Reddick's character or background despite the fact that Reddick had a criminal record for unlawful alcoholic beverage activities. See Seizure Case No. 6875, Bulletin 716, Item 3; Seizure Case No. 6950, Bulletin 719, Item 6; Seizure Case No. 6981, Bulletin 721, Item 3; Seizure Case No. 6989, Bulletin 734, Item 2; and Seizure Case No. 6982, Bulletin 759, Item 1.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and the same be and hereby is forfeited, in accordance with the provisions of R.S. 33:1-66, and that it be retained for 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  
Commissioner.

Dated: May 15, 1947.

SCHEDULE "A"

- 3 - bottles whiskey
- 28 - bottles of beer
- 1 - music box (Gables Charmes, Serial No. 2087095) and coins, therein
- 1 - table
- 1 - oil heater

12. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - EFFECTIVE DATE FIXED FOR SUSPENSION PREVIOUSLY IMPOSED UPON REOPENING OF BUSINESS.

In the Matter of Disciplinary , )  
Proceedings against )

GEORGE LYDON )  
T/a DEL MONTE BAR )  
2601 Atlantic Avenue )  
Atlantic City, N. J., )

O R D E R

Holder of Plenary Retail Consump- )  
tion License C-102 issued by the )  
Board of Commissioners of the )  
City of Atlantic City. )  
----- )

BY THE COMMISSIONER:

It appearing that by Order dated September 24, 1946, the license held by the above defendant was suspended for a period of thirty days, and that the effective date of said suspension was reserved for future determination (Re Lydon, Bulletin 751, Item 4), and

It appearing that defendant is entitled to the benefits of a subsequently adopted policy whereby five days were remitted for a plea of non vult (Re Gelb, Bulletin 741, Item 8), and

An Order entered herein on February 10, 1947, suspending defendant's license from February 24, 1947 to March 21, 1947 (Bulletin 749, Item 2) having been cancelled by me, and no reason appearing why the suspension should not be served at this time;

It is, on this 16th day of May, 1947,

ORDERED that the suspension heretofore imposed be reduced from thirty to twenty-five days, and that Plenary Retail Consumption License C-102, issued by the Board of Commissioners of the City of Atlantic City to George Lydon, t/a Del Monte Bar, for premises 2601 Atlantic Avenue, Atlantic City, be and the same is hereby suspended for twenty-five (25) days, commencing at 7:00 a.m. June 2, 1947, and terminating at 7:00 a.m. June 27, 1947.

*Erwin B. Hoek*

Commissioner.