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

N O T I C E

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

BULLETIN 485 NOVEMBER 25, 1941.

1. APPELLATE DECISIONS - PROPELLER CAFE, INC. v. NEWARK.

RENEWAL DENIED FOR ALLOWING A "KNOWN CRIMINAL" TO FREQUENT THE LICENSED PLACE - NOT A "KNOWN CRIMINAL" WITHIN THE MEANING OF REGULATIONS NO. 20, RULE 4 - DENIAL REVERSED AND RENEWAL GRANTED SUBJECT TO CONDITION THAT THE PERSON NOT BE ALLOWED IN THE LICENSED PLACE.

PROPELLER CAFE, INC.,
Appellant,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,
Respondent

ON APPEAL
CONCLUSIONS AND ORDER

Jacob S. Glickenhaus, Esq., Attorney for Appellant.
Thomas F. Guthrie, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from respondent's refusal to renew appellant's plenary retail consumption license for premises 417 Halsey Street, Newark, N. J.

The sole reason assigned by respondent for such denial is that appellant, through Harry Liberman, its major stockholder, permitted one David Liberman (brother of Harry) "to frequent its place of business, knowing said relative had a long criminal record and a criminal conviction for possession of lottery slips."

Respondent's action has for its basis an alleged violation of Rule 4 of State Regulations No. 20, which provides:

> "No licensee shall allow, permit or suffer in or upon the licensed premises any known criminals, gangsters, racketeers, pick-pockets, swindlers, confidence men, prostitutes, female impersonators, or other persons of ill-repute."

The question arises: Was David Liberman a "known criminal" within the meaning of this rule?

From its inception, it was recognized by Commissioner Burnett that the rule was not intended to apply to every person who had been convicted of a crime. In one of the early rulings of the Commissioner, Re Gedney, Bulletin 60, Item 5, it was said:

> "In its broad sense the word 'criminal' includes any person who has been convicted of the violation of any criminal statute. See Creeden v. Boston & Maine Railroad, 79 N. E. 344 (Mass.); Molineaux v. Collins, 69 N. E. 727 (N. Y.). But the use of the word 'criminal' in association with 'racketeer', 'gangster', etc.

evidences an intent to confine its meaning to professional rogues and similar persons universally recognized as social menaces.

"Rule #4 was designed to aid in disassociating the liquor industry from its unsavory elements. To be effective, it must be strictly observed and licensees must consistently decline to permit on the licensed premises persons who are known to defy law. Neither the presence nor the absence of a judicial conviction of crime is conclusive. A person who has been convicted of transporting beer in violation of law is not, without more, considered as a professional rogue; a person who has never been convicted of crime but is a member of a gang of racketeers or habitual law violators, is so considered. The latter type of person comes within the proscribed class; the former does not."

With this interpretation of the rule in mind, let us examine David's criminal record. It was stipulated at the hearing that his fingerprint returns showed four convictions:

"2-8-1920: - Newark, N. J., as David Liberman, Dis. Cond. Off. McCarthy, 4th Pct. On 2-9-20, Judge Boettner, 1st C.C., Fined $5. (Paid).

"7-30-1925:- Newark, N. J., as David Liberman, Gambling (Crap Game). Offs. Coll, Fischer, Fuchs, Mallon & Caffrey, 4th Pct. On 7-31-25, Judge Albano, Ct. 3-1, Fined $10. & $2.05 costs.

"4-2-1930: - Newark, N. J., as David Liberman, A. & B. Off. Harenburg, 4th Pct. William Ritger, 396 Avon Ave., compl't. On 4-3-30, Judge Albano, Ct. 3-1, Sent. Susp.

"2-23-1940:- Newark, N. J., as David Lieberman, Poss. Lottery Slips. Sergt. Morgan, Dets. Podlas & Weller, Pol. Comm. Off. Offs. compl't. On 3-15-40, Judge Duveneck, 1st C.C., B.G.J., $1,000 cash. On 7-22-40, Judge Van Riper, Probation until $150.00 is paid."

It was conceded that the first two were convictions of local ordinances, which are not considered convictions of crimes within the definition of that term. Re Case No. 382, Bulletin 463, Item 9; Re Case No. 388, Bulletin 479, Item 8. The proof relative to the third conviction indicates that it might have resulted from a charge based either on municipal ordinance or statute. In any event, however, the suspended sentence imposed upon the accused would lead one to believe that it was not an aggravated offense. The fourth conviction is, of course, a conviction of a crime. The evidence as presented by the respondent shows, however, that it did not involve a "numbers" lottery but rather a raffle sponsored by the B.P.O.E. of Haverstraw, New York. The evidence does not indicate that the accused was a "ringleader" or principal in the unlawful enterprise.

There is nothing in the record to indicate that the licensee was aware of David Liberman's complete record. Harry Liberman, although admitting he knew that "fifteen or twenty years ago" David had paid a fine for "shooting crap," testified that until the police

investigation of the licensed premises in June 1941 he was not aware that David had "such a long record." Moreover, the police captain of the precinct in which the licensed premises are located, admitted that the licensee had never been warned to exclude David Liberman from the premises. While such lack of admonitory notification would not constitute a legal defense to a charge under the Regulation, nevertheless in the light of the accused's record, it is a pertinent factor to be considered in determining the magnitude of appellant's guilt.

The testimony further discloses that the Captain of the First Precinct, to whom the application for renewal of the license of the Propeller Cafe, Inc. was referred for investigation, reported:

> "I have investigated this application and report as follows:
>
> "The applicant a Corporation has a Plenary Retail Consumption License for the Tavern they operated during the past year. I have no objections to the renewal of same."

Thereafter, apparently, the Captain was requested to re-investigate the applicant, whereupon he reported that while David Liberman appeared to have no financial interest in the licensed premises, he was withdrawing his original recommendation and disapproving the renewal of the license because "the proprietors have been and still are permitting him on the premises and in view of the fact that he has a criminal record." Exhibit R-1.

Respondent's careful study and scrutiny of appellant's record is to be commended.

It is apparent from the fingerprint returns that David Liberman has been a bad actor. However, it is not David Liberman who is on trial in this case. The question to be decided is whether or not the licensee, who appears to operate a place little different from many another "spot" on Halsey Street, shall be put out of business because David has, from time to time, frequented its licensed premises. If it is the purpose of respondent to clean up Halsey Street, then a uniform procedure must be adopted which, when put into operation by the respondent, will have my wholehearted support.

If, on the other hand, it is the purpose of respondent to prevent David Liberman from frequenting the licensed premises, that may be accomplished, perhaps more fairly, without necessarily closing the licensed premises.

Under all of the circumstances, I am constrained to hold that respondent was not justified in denying a renewal of license to appellant on the ground that it permitted a "known criminal" to frequent its premises. Cf. Zicherman v. Newark, Bulletin 227, Item 7, where the late Commissioner Burnett reversed a refusal to renew in a case where the licensee had employed a person who had been convicted of manslaughter, and another convicted twice of assault and battery and also for creating a disturbance; Re Zielinsky, Bulletin 284, Item 8, where a charge of permitting a person who had been convicted of complicity in the operation of a still to frequent the licensed premises, was dismissed as not within the intendment of the Regulation; Re Silver, Bulletin 441, Item 12, where it was held that one convicted of atrocious assault and battery and gambling, another of atrocious assault and battery and desertion, and another of assault and battery, all having served substantial jail terms, were not "known criminals" within the meaning of the Regulation. In the latter case, it was said:

"While each of these men have been convicted of crimes, there is nothing in their records to show that they should be classified as 'known criminals or persons of ill-repute' within the meaning of those terms as used in Rule 4 of State Regulations No. 20. Those terms refer to professional rogues, members of a gang of racketeers or habitual law violators. Re Gedney, Bulletin 60, Item 5. Cf. Re Palace Chop House, Bulletin 95, Item 8. Moreover, the licensee and his bartender testified that they had no knowledge that any of the three individuals had ever been convicted of crime and each of the three patrons denied that they had ever disclosed any information with reference to their criminal records to the licensee or his bartender. The purpose of the rule is to prohibit licensed premises from being used as a hang-out for persons generally known or known to the licensee or his agents to be undesirables. The rule was not intended to prohibit every person who has ever been convicted of a crime from patronizing licensed premises, particularly so where neither the licensee nor any of his employees has any knowledge of the criminal record of the patron. The latter interpretation would require a licensee to question every patron as to whether he had ever been convicted of a crime."

It does not follow, however, that respondent is left without any means of remedying what it believes to be a harmful situation. If David Liberman were a stranger to the licensee, respondent's opinion that his frequenting the licensed premises is detrimental to the interests of sound liquor control would, perhaps, be groundless. The fact, however, that he is a brother of the controlling stockholder of the licensee increases the likelihood that he might be allowed more freedom to carry on any nefarious practices at its premises than he would be elsewhere.

The desired result may be obtained by imposing a condition in the license that David Liberman be not permitted upon appellant's premises. Cf. Zicherman v. Newark, supra. Appellant has signified its willingness that such a condition be inserted in the license. If the condition is violated, respondent may institute disciplinary proceedings against the appellant for revocation of its license, or refuse to renew.

Accordingly, it is, on this 13th day of November, 1941,

ORDERED, that the action of respondent be reversed, and it is directed to issue the renewal of license as applied for, subject, however, to the following condition to be inserted in the license:

"The licensee shall not allow, permit or suffer David Liberman, brother of Harry Liberman, in or upon its licensed premises at any time for any reason whatsoever."

It is further ORDERED that the term of Plenary Retail Consumption License C-112, held by appellant for the fiscal year 1940-41, heretofore extended during the pendency of these proceedings by order of this Department dated July 12, 1941, be and the same is hereby further extended until the issuance by respondent of appellant's renewal license.

ALFRED E. DRISCOLL,
Commissioner.

2. MORAL TURPITUDE - HIGHWAY ROBBERY AND CARRYING CONCEALED WEAPONS INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - APPARENT INNOCENT EMPLOYMENT ON LICENSED PREMISES DESPITE DISQUALIFICATION DUE TO MISUNDERSTANDING OF EFFECT OF PARTIAL PARDON - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, pursuant to R. S. 33:1-31.2.

Case No. 181

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

In 1931 petitioner was convicted of highway robbery and of carrying concealed weapons, sentenced to serve eighteen months in the county penitentiary and released in 1932. It seems that while under the influence of liquor, the petitioner held up a bus driver, with whom he was acquainted, and from whom he took $15.50.

After Repeal, petitioner went to work as a bartender but was discharged in 1935 when his employer was advised by investigators of this Department that there was some question as to his eligibility because of his conviction of crime.

Petitioner then sought a ruling from this Department and was advised that his convictions involved moral turpitude and that he was a disqualified person within the meaning of the Alcoholic Beverage Control Law. He claims that, in addition, he was orally advised that he would become eligible if he obtained a pardon.

Petitioner then sought a pardon. However, in fact, the Court of Pardons, in October 1936, by a document designated "restoration to citizenship" merely restored him to the right of suffrage which he had forfeited by reason of his conviction. This differs from a full pardon, the effect of which is to acquit the offender of all forfeiture annexed to the offense for which he obtains his pardon. While he did not work as a bartender from 1935 until he obtained his restoration to citizenship in 1936, thereafter he went back to that work under the honest belief, as he claims, that its effect was to render him again eligible for employment. In this he was in error, since restoration to citizenship, not being a full pardon, does not remove his disqualification. Re Case No. 139, Bulletin 455, Item 1; Re Tanski, Bulletin 164, Item 12. Nevertheless, petitioner has worked as a bartender since October 1936 and filed the present application to remove his disqualification when, in the course of an investigation, agents of this Department informed him that despite his restoration to citizenship, he still remained disqualified.

A Captain of Police of the municipality where the petitioner resides, who has known petitioner for many years, considers him of excellent reputation. He testified that petitioner "got into a little jam at one time, but outside of that his reputation is good" (referring to his conviction of highway robbery); that it was a temporary slip, rather than a planned crime, and that

petitioner has led a decent, law-abiding life. Similar opinions as to his reputation are held by a contractor and another police officer, of the same municipality, who have known petitioner for twenty years and five years, respectively, both of whom testified that petitioner is a decent and law-abiding person.

The Chief of Police of the municipality where the petitioner resides advises that there are no pending investigations or reports against petitioner and that to the best of his knowledge, petitioner has kept well within the law. Petitioner, who is thirty-eight years of age, has no other criminal record aside from the one conviction.

I am satisfied that petitioner made an honest mistake in resuming work after obtaining the restoration of his citizenship; that he did not intend to evade the law deliberately, and hence I conclude, from all the evidence, that petitioner has conducted himself in a law-abiding manner for at least five years last past and that his continued association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 14th day of November, 1941,

ORDERED, that petitioner's statutory disqualification because of the conviction described herein be and the same is hereby lifted in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL,
Commissioner.

3. AUTOMATIC SUSPENSION OF LICENSE UPON CRIMINAL CONVICTION FOR VIOLATION OF ALCOHOLIC BEVERAGE LAW - APPLICATION TO LIFT - SUSPENSION EQUIVALENT TO THAT WHICH WOULD BE IMPOSED IN DISCIPLINARY PROCEEDINGS ALREADY SERVED - APPLICATION GRANTED - THE POLICY RESTATED.

In the Matter of a Petition to lift the automatic suspension of Plenary Retail Consumption License C-773, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to ADAM and ANNA PANASEVITZ, 109 West Street, Newark, N. J.	CONCLUSIONS AND ORDER

Ralph E. Giordano, Esq., Attorney for the Licensees.

BY THE COMMISSIONER:

During the last fiscal year (1940-41) Adam Panasevitz, while the sole holder of the license for the tavern at the above premises, was brought before this Department on disciplinary proceedings in which he admitted guilt to the charges (1) that he had violated the Alcoholic Beverage Law by knowingly employing his son-in-law, William Witney, at the tavern despite Witney's disqualification from such employment by reason of conviction of crimes involving moral turpitude, and (2) that he had violated Rule 4 of State Regulations No. 20 by permitting the said Witney, a "known criminal and person of ill repute," to be in the tavern.

It appeared in such case that Deputy Chief Sebold of the Newark Police Department had actually warned the licensee in August 1940 that he could not employ or even permit Witney at the tavern; that, nevertheless, Panasevitz, on various occasions thereafter in September, October and November of 1940, had Witney help him out by tending bar.

In view of these facts and because the licensee had a past record, this Department, even though the disqualified person being employed was Panasevitz's son-in-law, suspended the license from and including June 9, 1941 through the balance of its term, viz., June 30, 1941, or a total of twenty-two days. See Re Panasevitz, Bulletin 464, Item 6 (giving the full facts and also detailing Panasevitz's past record).

On October 29 last, Panasevitz was convicted in criminal court for his above mentioned violation of the Alcoholic Beverage Law in employing Witney, and was fined $50.00. As a result of such conviction the current license for the tavern, though now being held jointly by Adam Panasevitz and his wife, was automatically suspended for the balance of its term under R. S. 33:1-31.1, with discretionary power residing in the State Commissioner to lift such suspension "for good cause."

I now have before me a petition praying for such lifting in the present case.

In considering such petitions it must be clearly borne in mind that the purpose of the automatic suspension is to ensure that, when a licensee is convicted in criminal court for violating the Alcoholic Beverage Law, there is swift and sure penalty against his license. See Re Jamouneau, Bulletin 165, Item 3.

In view of such purpose, this Department has heretofore adopted, and I here reaffirm, the salutary policy of lifting such suspensions when, and only when, the license has been suspended for what appears, in view of all the facts, to be a sufficiently penalizing length of time. See Re Devonmille, Bulletin 212, Item 3; Re Hill, Bulletin 305, Item 7; Re Ernie's Garden, Bulletin 363, Item 14; Re Ghetti, Bulletin 365, Item 5. Cf. Re Sandago, Bulletin 249, Item 1; Re Haino, Bulletin 295, Item 7; Re Inglese, Bulletin 307, Item 1.

In the present case the Department, in its disciplinary proceedings heretofore held in this same matter, has already imposed a suspension which it deemed proper (viz., twenty-two days) and which was fully served last June. The tavern has now again been actually closed since November 6, when its license was picked up under the automatic suspension. This present closing, added to the past suspension, makes a total of thirty days. That is enough. In view of such fact, and since the petition sets forth that Witney has not been permitted in the tavern since the time of the violation, the automatic suspension will be lifted.

However, I do not here purport to pass on the serious question whether Panasevitz is actually disqualified from hereafter (cf. Re Wismer, Bulletin 298, Item 5) obtaining any further liquor license in this State in view of P.L. 1941, c. 97, effective April 30, 1941, which disqualifies applicants convicted in criminal court for violating the Alcoholic Beverage Law. See Re New Legislation, Bulletin 463, Item 10. Ruling on such point will be made in due course.

Accordingly, it is, on this 14th day of November, 1941,

ORDERED, that the automatic suspension of the present license be lifted, effective immediately.

ALFRED E. DRISCOLL,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGE BELOW FAIR TRADE MINIMUM - PRIOR CONVICTION OF DISSIMILAR OFFENSE - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against ALEXANDER KORZUN, 658½ Elizabeth Ave., Elizabeth, N. J., Holder of Plenary Retail Consumption License No. C-105, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth.	CONCLUSIONS AND ORDER

Alexander Korzun, Pro Se.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee has pleaded guilty to a charge of selling an alcoholic beverage below Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

The reports of the Department agents who took part in the investigation disclose that on September 30, 1941 they purchased a quart bottle of Wilson "That's All" Whiskey for the sum of $2.60 from the licensee. The minimum consumer price at which a quart bottle of this whiskey could be sold at the time was $2.69. Bulletin 471.

The licensee offers no explanation for the violation and shows no mitigating circumstances. In the absence of a previous record, and in the absence of aggravating circumstances as in this case, defendant's license would have been suspended for ten days for his present offense. See Bernie Feldman's Liquor Store, Inc., Bulletin 482, Item 11.

It appears, however, that the defendant has a previous record. The Department files disclose that the defendant, in disciplinary proceedings before the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth, was convicted of a charge of selling an alcoholic beverage to a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20. The license then held by him was suspended for seven days, effective April 3, 1939.

In view of this previous record, the defendant's license will now be suspended for fifteen days instead of ten days for the present offense. Re Stein, Bulletin 478, Item 11.

By entering a guilty plea in advance of the date set for hearing, the licensee has saved the Department the time and expense of proving its case. Five days of the penalty will therefore be remitted.

Accordingly, it is, on this 17th day of November, 1941,

ORDERED, that Plenary Retail Consumption License C-105, heretofore issued to Alexander Korzun by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth, be and the same is hereby suspended for a period of ten (10) days, effective November 24, 1941, at 2:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - FRONT - SUSPENSION FOR BALANCE OF TERM, WITH LEAVE TO PETITION TO LIFT AFTER TEN DAYS IF SITUATION CORRECTED - 19 DAYS ELAPSED - SITUATION CORRECTED BY TRANSFER TO NEW OWNER - PETITION GRANTED.

In the Matter of Disciplinary Proceedings against	)	
STANLEY PLAGER, T/a POP'S TAVERN, State Highway Route 4-9, Madison Township (Middlesex County), P. O. Matawan, N. J., R.F.D.,	)	ON PETITION ORDER
Holder of Plenary Retail Consumption License C-36, heretofore issued by the Township Committee of Madison Township (Middlesex County).	)	

Heuser & Heuser, Esqs., Attorneys for Petitioner, Edmund H. Skinner.

BY THE COMMISSIONER:

On October 24, 1941 I suspended the license of defendant herein for the balance of its term, effective October 29, 1941, after he had been found guilty of charges alleging, in substance, that he was a front for Clarence Haight. In said order leave was given to a duly qualified purchaser, if and when transfer of the license was granted to him, to make application to me to vacate said suspension. Re Plager, Bulletin 482, Item 4. Pursuant to said leave, Edmund H. Skinner has filed a verified petition, wherein he sets forth that he has purchased from Stanley Plager and Clarence Haight all their right, title and interest in and to the property and business known as "Pop's Tavern"; that he is qualified in all respects to hold a license; and that on November 13, 1941 the Township Committee of Madison Township transferred the above mentioned license to him.

Since it appears from said petition that the license herein has been transferred to a duly qualified person and that more than ten days have elapsed since the suspension became effective,

It is, on this 17th day of November, 1941,

ORDERED, that the suspension heretofore imposed be lifted and that Plenary Retail Consumption License C-36 be and the same is hereby restored to full force and operation, effective immediately.

ALFRED E. DRISCOLL,
Commissioner.

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

In the Matter of Disciplinary Proceedings against

BERTHA SURPIN & YETTA SHAPIRO, T/a THE LIQUOR STORE, 809 Broadway, Bayonne, N. J.,

Holder of Plenary Retail Distribution License No. D-12, issued by the Board of Commissioners of the City of Bayonne.

CONCLUSIONS AND ORDER

Bertha Surpin & Yetta Shapiro, T/a The Liquor Store, by Israel Shapiro, Manager.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee has pleaded guilty to a charge of selling an alcoholic beverage below Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

It appears from the Department file that, on September 30, 1941, two investigators purchased two quart bottles of Wilson "That's All" Whiskey for $2.30 each, making a total of $4.60, from William Surpin, husband of one of the licensees and a clerk employed in the liquor store. The minimum consumer price at which quart bottles of this whiskey could be sold at the time was $2.69. The minimum consumer price at which a half gallon (two quart) bottle of this whiskey could be sold at the time was $5.25. Bulletin 471.

The licensee offers no explanation for the violation and shows no mitigating circumstances. The licensee has no previous convictions of any kind. The license will, therefore, be suspended for ten days. Re Bernie Feldman's Liquor Store, Inc., Bulletin 482, Item 11.

By entering a guilty plea in advance of the date set for hearing, the licensee has saved the Department the time and expense of proving its case. Five days of the penalty will therefore be remitted.

Accordingly, it is, on this 18th day of November, 1941,

ORDERED, that Plenary Retail Distribution License D-12, heretofore issued to Bertha Surpin & Yetta Shapiro, T/a The Liquor Store, by the Board of Commissioners of the City of Bayonne, be and the same is hereby suspended for a period of five (5) days, effective November 24, 1941, at 3:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCIES IN COLOR, ACID AND SOLID CONTENT - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against

P. & H. VAN VOOREN,
Main Street and Beaverbrook Road,
Lincoln Park, N. J.,

Holders of Plenary Retail Consumption License C-2, issued by the Borough Council of the Borough of Lincoln Park.

CONCLUSIONS AND ORDER

Peter Van Vooren, appearing for Licensees, Pro Se.
Richard E. Silberman, Esq., Attorney for State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensees were charged as follows:

"1. On or about June 19, 1941 you possessed an illicit alcoholic beverage in that one quart bottle labeled 'Four Roses 100% Straight Whiskies' found in your licensed premises, contained an alcoholic beverage which varied from a genuine sample used for comparative purposes in proof, and acid, solid and color content, in violation of R. S. 33:1-50.

"2. On or about the date aforesaid and prior thereto, you, not being the holders of a brewery, distillery, winery or rectifier's license, bottled an alcoholic beverage for sale and resale in that you refilled one quart bottle labeled 'Four Roses 100% Straight Whiskies' with other whiskey, in violation of R. S. 33:1-78."

It appears from the testimony that on June 19, 1941, Storekeeper Gauger Lawson of the Alcohol Tax Unit, Internal Revenue Service, during the course of an investigation of the licensed premises, examined twelve opened bottles and found one quart bottle of Four Roses 100% Straight Whiskies which contained artificial coloring. He seized the Four Roses bottle and it was turned over to the chemist attached to the Alcohol Tax Unit for purpose of analysis.

The chemist testified that he analyzed the whiskey contained in the seized bottle and found it to have a proof of 87.3, an acid content of 40.8 grams per 100 liters, solid content of 216 grams per 100 liters, and 40% of artificial coloring. He further testified that an analysis of a genuine sample of this same product disclosed a proof of 90.1, acid content of 69.6 grams per 100 liters, a solid content of

177 grams per 100 liters, and no artificial coloring. The chemist testified that all genuine samples of Four Roses which he has examined contained natural coloring and that he has never found any genuine samples containing artificial coloring.

Peter Van Vooren testified that the premises are conducted by himself and his wife, who is the other defendant herein; that he never tampered with the contents of the seized bottle; that he believes that neither his wife nor the bartender, whom they employ, ever tampered in any way with the seized bottle. He further testified that he occasionally left the premises in charge of another man who is now in the Army and that he can offer no explanation as to the refill except that perhaps this other man drank some of the contents of the seized bottle and refilled it with other liquor.

The present case is very similar in its facts to Re Cutter, Bulletin 479, Item 12, and Re Hattie, Inc., Bulletin 482, Item 2.

The many ramifications of the problem of "refills" and the reasons for the necessity of imposing stern penalties for this type of violation despite the professed innocence of the licensees, is discussed at length in Re Cutter, supra, and no useful purpose would be served by a repetition thereof in this case.

The licensees are guilty as charged.

This is licensees' first offense of any kind. No aggravating circumstances appear. In accordance with the precedent established in the cases cited herein, the license will be suspended for ten days.

Accordingly, it is, on this 18th day of November, 1941,

ORDERED, that Plenary Retail Consumption License C-2, heretofore issued by the Borough Council of the Borough of Lincoln Park to P. & H. Van Vooren, for premises at Main Street and Beaverbrook Road, Lincoln Park, be and the same is hereby suspended for a period of ten (10) days, commencing November 24, 1941, at 1:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

8. MORAL TURPITUDE - BREAKING AND ENTERING INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, pursuant to R. S. 33:1-31.2.

Case No. 179

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

In 1932 petitioner and two companions were convicted in New York of unlawful entry because they broke into a store and stole about $18.00. Petitioner received a suspended sentence and was placed on parole. Later in 1932 and while still on parole, he was again convicted of unlawful entry, sentenced to serve from one to three years in the county penitentiary, and released in the winter of 1933. Since then his record is clear.

The crime of breaking and entering involves moral turpitude. Re Case No. 186, Bulletin 209, Item 6. Petitioner is therefore a disqualified person within the meaning of the Alcoholic Beverage Control Law, and seeks removal of such disqualification, incidental to his application for an employment permit.

After his release in 1933, petitioner, then about twenty-four years of age, lived with a sister in New York and worked at odd jobs for a year or two; then he obtained steady work in various fruit and vegetable markets until September 1939; from October 1939 until May 1941 he worked as a roofer; after that he came to New Jersey to live with another sister and to work in a vegetable market owned by a relative.

The wife of a dress operator, a neighbor who became acquainted with petitioner in New York through her friendship with his sister and who has known him for about twelve years, testified that he is of good reputation; that he got into trouble because of bad companions but that in the past five years he has been quiet, seldom goes out at night and has led a decent life. Two other neighbors, the wife of a barber and a retired insurance agent, who have known petitioner for four or five years, likewise testified that he is of good reputation and has been law-abiding for the period they know him.

The Police Department of the place where petitioner formerly resided has nothing against petitioner other than the arrests for unlawful entry hereinbefore referred to, and the Chief of Police of the municipality where petitioner now resides reports that his files do not disclose any record against petitioner.

I therefore conclude that petitioner has been law-abiding for at least five years last past, and that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 19th day of November, 1941,

ORDERED, that petitioner's statutory disqualification because of any conviction described herein be, and the same is hereby lifted in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL,
Commissioner.

9. MORAL TURPITUDE - ARSON INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, pursuant to R. S. 33:1-31.2.

Case No. 186

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

In 1934 petitioner was convicted of arson, sentenced to serve from two to five years in State Prison, and released on parole in September 1935. This offense involved the burning of a roadstand by its owner, with the aid of three other persons, including the

petitioner. Immediately after his release, he pleaded non vult to an open indictment for arson and was given a suspended sentence. He says that this was a previous offense committed by his companions, in which he had no part, but to which he pleaded as he did because circumstances were against him and he was informed that sentence would be suspended.

The crime of arson, per se, involves moral turpitude. Petitioner seeks removal of his disqualification resulting from such conviction. He has no other criminal background except for an arrest for robbery in 1930, which was dismissed by the Grand Jury.

Petitioner is a butcher by trade and opened a retail market with his brother shortly after his arrest on the arson charge. This business was carried on by his brother while petitioner was in prison, and after his release he returned there and is now still conducting such business. They intend to apply for a liquor license for the premises, if petitioner's disqualification is lifted.

His character witnesses are a man in the oil and chemical business, who has known petitioner for about six years and has seen him nearly every day, who testified that petitioner's reputation was excellent; a man in the milk business, who does business with the brothers, and has known the petitioner for about six years, who testified that petitioner's reputation is good; and a member of the police force of the municipality where petitioner resides, who has known petitioner for about six years, and has been a police officer for about eleven or twelve years, who also testified that petitioner's reputation is excellent and who testified further, "I find that Mr.....(petitioner) has been 100% from the time that I met him until the present time and I can safely say that he will not do anything that is wrong hereafter."

The Chief of Police of the municipality where petitioner resided at the time that he committed the crime advises that petitioner has no police record since 1934 and that since that time he has been in contact with him and finds him to be a business man, the father of two children in high school, and that he is of the opinion that it would not be detrimental to the best interests of the citizens of the State if petitioner were permitted to associate with the alcoholic beverage industry.

The Chief of Police of the place where petitioner now resides advises that the records of his Department fail to disclose any arrests or complaints within the past five years, or any pending investigations or reports involving the petitioner, and that he has reason to believe that petitioner's association with the alcoholic beverage industry will not be contrary to public interest.

I therefore conclude that petitioner has been law-abiding for at least five years last past, and that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 19th day of November, 1941,

ORDERED, that petitioner's statutory disqualification because of any convictions described herein, be and the same is hereby lifted in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL,
Commissioner.

10. MORAL TURPITUDE - CONSPIRACY TO OPERATE A LOTTERY INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, pursuant to R. S. 33:1-31.2.

Case No. 189

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

In February 1922 petitioner was arrested for selling liquor without a license and, in October 1922, again arrested as a disorderly house proprietor. Both charges were subsequently dismissed by the Grand Jury. He admits that, about 1925, he was fined $250.00 for a violation of the National Prohibition Act. In 1934 he was convicted of conspiracy to operate a lottery and was fined $1,000.00.

At the hearing herein, petitioner testified that he operated a licensed saloon prior to Prohibition and that his arrests in 1922 and his conviction in 1925 resulted from his operation of a "speakeasy" after Prohibition. He testified that the "disorderly house" charge, in 1922, involved only the unlawful sale of liquor. He further testified that, for the past sixteen years, he has been engaged in the real estate and insurance business and that he has not been arrested or convicted, during that period, except on the conspiracy charge mentioned above. Referring to his conviction in 1934, petitioner says that he and his brother sold "numbers" through agents, as a result of which both of them were convicted and fined the sum of $1,000.00; that he entered into this conspiracy because, at that time, "things were very bad" in the real estate business.

A fellow officer of a fraternity to which both he and petitioner have belonged for fifteen years, an attorney who represents an association of which petitioner has been an officer for the past seventeen years and who has known him during that time, and the proprietor of a dry cleaning business, who has known petitioner about fifteen years, testified on his behalf. All of these witnesses corroborated his testimony as to his residence and employment and his clear record since his last conviction. The Police Chief of the municipality in which petitioner has resided for the past fifteen years has certified that there are no investigations or complaints pending against him.

Since there appear to be no aggravating circumstances, the conviction for violating the National Prohibition Act does not involve moral turpitude. I believe, however, that the conviction for conspiracy does involve moral turpitude since it appears that petitioner was one of the principals involved therein and not a minor employee or agent. Hence he is disqualified by the statute.

I find, however, that petitioner has not been convicted of any crime for more than seven years last past. The evidence given by petitioner and his witnesses leads me to conclude that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 22nd day of November, 1941,

ORDERED, that petitioner's statutory disqualification because of the convictions described herein be and the same is hereby lifted, in accordance with the provisions of R. S. 33:1-31.2.

Alfd E Driscoll

Commissioner.

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