

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

BULLETIN 569

MAY 25, 1943.

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS - EXERCISING THE RIGHTS AND PRIVILEGES OF THE LICENSE PRIOR TO TRANSFER, IN VIOLATION OF R.S. 33:1-26 - 10 DAYS' SUSPENSION.
2. DISCIPLINARY PROCEEDINGS - CHARGE OF PERMITTING BOOKMAKING ON LICENSED PREMISES - DISMISSED ON FAILURE OF THE DEPARTMENT TO SUSTAIN THE BURDEN OF PROOF - FALSE LABEL ON BEER TAP, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 22 - 3 DAYS' SUSPENSION, LESS 1 FOR GUILTY PLEA.
3. APPELLATE DECISIONS - WOODLAND ROD AND GUN CLUB v. BELLEVILLE.
4. LIMITATION OF LICENSES - RENEWALS - TRANSFERS - WHERE THE NUMBER OF LICENSES EXCEEDS THE LIMITATION QUOTA, CONTINUATION OF THE LICENSED BUSINESS BY A NEW OWNER OR OWNERS CAN BE ACCOMPLISHED ONLY BY FORMAL TRANSFER.
5. DISCIPLINARY PROCEEDINGS - CHARGES OF FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACTS AND PERMITTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - DISMISSED ON FAILURE OF THE DEPARTMENT TO SUSTAIN THE BURDEN OF PROOF.
6. MORAL TURPITUDE - ILLEGAL OPERATION OF A STILL INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - GOOD CONDUCT FOR FIVE YEARS LAST PAST AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION TO LIFT GRANTED.
7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - 10 DAYS' SUSPENSION - SALE OF ALCOHOLIC BEVERAGES TO PERSONS ACTUALLY OR APPARENTLY INTOXICATED, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 20 - 40 DAYS' SUSPENSION - TOTAL: 50 DAYS.
8. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - PERMITTING NON - LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - FAILURE TO NOTIFY MUNICIPAL ISSUING AUTHORITY OF CHANGE IN FACTS, IN VIOLATION OF R. S. 33:1-34 - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT AFTER EXPIRATION OF 25 DAYS AND CORRECTION OF ILLEGAL SITUATION.
9. DISCIPLINARY PROCEEDINGS - EXERCISING THE RIGHTS AND PRIVILEGES OF THE LICENSE PRIOR TO TRANSFER - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - PERMITTING KNOWN CRIMINALS ON LICENSED PREMISES - PERMITTING KNOWN FEMALE IMPERSONATOR ON LICENSED PREMISES - SALE OF ALCOHOLIC BEVERAGES TO MINOR - VIOLATION OF CONDITION IMPOSED ON LICENSE - LICENSE REVOKED.

VIOLATION OF A CONDITION IMPOSED ON A LICENSE IN ITSELF WARRANTS IMMEDIATE REVOCATION.
10. MORAL TURPITUDE - CRIME OF LARCENY AND RECEIVING NORMALLY INVOLVES MORAL TURPITUDE.

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

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

BULLETIN 569

MAY 25, 1943.

1. DISCIPLINARY PROCEEDINGS - EXERCISING THE RIGHTS AND PRIVILEGES OF THE LICENSE PRIOR TO TRANSFER, IN VIOLATION OF R. S. 33:1-26 - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

ANNA MASSAR)
222-224 - 70th Street)
Guttenberg, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-13, issued by the Mayor and Board of Council of the Town of Guttenberg.)
-----)

Lewis W. Vanderbach, Esq., Attorney for Defendant-Licensee.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee pleads non vult to the following charge:

"From June 2, 1941 until December 1, 1941 and from June 15, 1942 until September 21, 1942, you exercised the rights and privileges of the successive plenary retail consumption licenses then being held by Anna Maruska for premises at 222-224 - 70th Street, Guttenberg, New Jersey, in violation of R. S. 33:1-26."

Upon the death of her husband in 1933, defendant obtained a temporary license and thereafter held a license until some time in the year of 1935. The licensed premises are located in a large building which is operated as a hotel and rooming house. Apparently the hotel was conducted by the defendant during her husband's life, and after his death it was her main source of income. Defendant sold the licensed business in 1935 and the license was transferred to the purchaser. Thereafter the license was transferred to successive purchasers of the business. Shortly prior to June 2, 1941, because the then owner was not paying his rent and the business was in bad condition, defendant repurchased the tavern. It was apparently suggested to defendant that the license be taken in the name of her daughter, Anna Maruska, because defendant had theretofore been charged by the Department of Alcoholic Beverage Control with the possession of a still. See Re Seizure Case No. 1556. In his Conclusions in the cited case the Commissioner found that defendant had "unwittingly" violated the law while acting in "good faith." On June 2, 1941 the license was transferred to the daughter, who thereafter renewed it. The license was subsequently transferred from Anna Maruska to defendant on September 21, 1942.

The defendant was and is fully qualified to hold a liquor license. This fact, however, does not excuse the violation of the law. Nor can the violation be overlooked even if faulty advice was given to and accepted by the defendant.

Because of the correction, the guilty plea, the frank disclosure of the facts and circumstances surrounding the instant case, and the further fact that defendant has no record, I shall suspend the operation of the license for a minimum period of ten days. See Re Lambert, Bulletin 563, Item 6.

Accordingly, it is, on this 14th day of May, 1943,

ORDERED, that Plenary Retail Consumption License C-13, issued by the Mayor and Board of Council of the Town of Guttenberg to Anna Massar, for premises 222-224 - 70th Street, Guttenberg, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 A.M. May 18, 1943, and terminating at 3:00 A.M. May 28, 1943.

ALFRED E. DRISCOLL
Commissioner.

- 2. DISCIPLINARY PROCEEDINGS - CHARGE OF PERMITTING BOOKMAKING ON LICENSED PREMISES - DISMISSED ON FAILURE OF THE DEPARTMENT TO SUSTAIN THE BURDEN OF PROOF - FALSE LABEL ON BEER TAP, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 22 - 3 DAYS' SUSPENSION, LESS 1 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

ALBERT EDWARD LANGFORD)
T/a LANGFORD'S RAILROAD TAVERN)
Middletown Township)
P. O. Belford, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-5 issued by the Township Committee of the Township of Middletown.)
-----)

J. Frank Weigand, Esq., Attorney for Defendant-Licensee.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to Charge No. 1 as follows:

"1. On October 19, 1942 you allowed, permitted and suffered book-making and gambling on and about your licensed premises, in violation of Rule 7 of State Regulations No. 20."

Defendant pleaded guilty to Charge No. 2 as follows:

"2. On the date aforesaid, you possessed on your licensed premises a barrel from which 'Schmidt's' beer was being drawn through a spigot or other dispensing apparatus which did not contain the name or brand of the manufacturer of that beer but, instead, was labeled 'Schaefer's', in violation of Rule 1 of State Regulations No. 22."

The evidence produced by the Department as to the first charge is that an investigator asked a temporary bartender in the licensed premises if he could take a horse race bet. The bartender replied that he could not and asked the investigator if he knew the licensee.

The investigator asked for a slip of paper, on which he wrote the name of a horse and handed the slip to the bartender with two dollars. The slip and money were then placed near the cash register. The bartender testified that he was busy and did not know what was on the slip which he was asked to "give to the boss." There is no claim that the bartender was a book-maker.

When the investigator returned after the race and inquired of the licensee as to the outcome thereof, he was handed back his slip and the identical two one-dollar bills, with this remark: "Are you the fellow - here we don't take any bets." The testimony of the other investigator was unavailable because he had been inducted into the army.

The investigator testified that he found some racing forms on the licensed premises. The licensee said they were brought on his premises by patrons. Their mere presence, although suspicious, does not prove that the licensee permitted, allowed or suffered book-making or gambling on the premises.

The licensee testified that, when he came on duty later in the morning, the bartender called his attention to the slip and money and told him he didn't know what it was but had promised to call it to his attention. It is agreed that the money was returned. Whether this was due to the fact that the licensee does not take bets or to a possible suspicion of well-dressed strangers in his tavern, usually patronized by working men and fishermen, or merely because the horse was "scratched", cannot be determined. Although the investigators conducted an exhaustive search of the premises, they found no other betting slips or other evidence of bookmaking or gambling. Defendant, who has been a licensee since Repeal, has no prior record. From the evidence presented there is a serious doubt as to whether the licensee or his agent allowed, permitted or suffered bookmaking or gambling on the licensed premises.

I conclude that the Department has failed to carry the burden of proof and find the defendant not guilty as to Charge No. 1.

On his plea of guilty to Charge No. 2, the usual penalty is three days, which I shall impose in this case, less one day for the guilty plea, leaving a net penalty of two days.

Accordingly, it is, on this 17th day of May, 1943,

ORDERED, that Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Middletown to Albert Edward Langford, t/a Langford's Railroad Tavern, for premises in Middletown Township, be and the same is hereby suspended for two (2) days, commencing at 2:00 A.M. May 20, 1943, and terminating at 2:00 A.M. May 22, 1943.

ALFRED E. DRISCOLL
Commissioner.

3. APPELLATE DECISIONS - WOODLAND ROD AND GUN CLUB v. BELLEVILLE.

WOODLAND ROD AND GUN CLUB,)

Appellant,)

-vs-)

BOARD OF COMMISSIONERS OF)
THE TOWN OF BELLEVILLE,)

Respondent)
-----)

ON APPEAL
CONCLUSIONS AND ORDER

Edward J. Abromson, Esq., Attorney for Appellant.
Lawrence E. Keenan, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from a decision of the Board of Commissioners of the Town of Belleville revoking its club license for premises 215 North Belmont Avenue, Belleville. The appeal acted as a stay of the order of revocation pending the determination of the same. R. S. 33:1-31.

On April 13, 1943 respondent Board found the appellant guilty of the following charge:

"That on January 30th, 1943, at approximately 1 a.m., Eastern War Time, you allowed, permitted or suffered in or upon the licensed premises, a brawl or brawls in violation of State Regulations No. 20, Rule 5."

Respondent failed to file an answer to the petition of appeal or to set forth the grounds for its action, as required by Rule 4 of State Regulations No. 14. Nonetheless, at the hearing on the appeal, the attorney for respondent was permitted to enter a verbal denial of all the allegations contained in the appellant's petition.

It appears from the evidence that three or four members of the appellant licensee, including one Anthony Maglio, together with a guest, Philip Russo, were in the barroom of the club on the early morning of January 30, 1943. They were engaged in rough repartee, persiflage, joking, or, as characterized by the witnesses, "kidding." Maglio, who had apparently been the butt of this kidding, left the premises, and, in about fifteen minutes, returned. He stood momentarily at the end of the bar, then, without warning, stabbed or cut Russo with a knife.

The testimony fails to show that there was the slightest wrangling, argument or noisy quarreling, or that there was any warning to the licensee, its agents or to the bystanders, that Maglio had any intention of attacking Russo. The injury to Russo was obviously slight as, after treatment at a hospital, he drove his car to his home. Russo was not a member of the appellant club. It is to be noted that at the hospital he deliberately misled the Newark Police as to the place where the stabbing occurred. This ill-advised deception on his part, concurred in by at least one other witness, was undoubtedly a source of irritation to the authorities.

It is difficult to find a satisfactory definition of the word "brawl." Webster defines it (as a noun) to mean "noisy quarrel; loud, angry contention; a broil, wrangle, tumult"; (Webster's international Dictionary, Merriam, 1943, Second Edition, Unabridged).

In construing the meaning of the word as used in the Regulation, it has been held that a stabbing or cutting in and of itself is not a brawl. Re Burd, Bulletin 412, Item 7. It was also held that a shooting, even fatal, is not necessarily a brawl. Re Gerrity, Jr., Bulletin 412, Item 6. I can find no precedent for the proposition that a brawl is in any way a necessary element of an assault or any other crime. It is unimportant, however, to define "brawl", as the gravamen in this charge is that the disturbance characterized as a "brawl" was "allowed, permitted or suffered" on the licensed premises by the licensee. There is no evidence in the record that the licensee or its agents had any warning that the kidding as indulged in by persons present on the premises would lead to the assault. There is nothing in the record indicating that anyone on the licensed premises on this occasion was drunk or had been drinking to excess. In the absence of any warning or the occurrence of an event which could reasonably be construed as a warning, it cannot be said that appellant "allowed, permitted or suffered" the assault. Cf. Re Gerrity, Jr., supra; Re Burd, supra.

Grave doubt exists in my mind as to the bona fides of the appellant as a club. That issue is, however, not presently before me.

The evidence in this case fails to support the particular charge preferred against the licensee by the respondent. Having reached this conclusion, it is unnecessary for me to consider any of the other reasons advanced by the appellant in support of its plea for reversal. The action of respondent must be reversed.

Accordingly, it is, on this 18th day of May, 1943,

ORDERED, that the order heretofore entered by respondent herein on April 13, 1943, revoking appellant's club license CB-1, be and the same is hereby vacated and set aside; and it is further

ORDERED, that the said license be and the same is hereby restored to full force and effect.

ALFRED E. DRISCOLL
Commissioner.

4. LIMITATION OF LICENSES - RENEWALS - TRANSFERS - WHERE THE NUMBER OF LICENSES EXCEEDS THE LIMITATION QUOTA, CONTINUATION OF THE LICENSED BUSINESS BY A NEW OWNER OR OWNERS CAN BE ACCOMPLISHED ONLY BY FORMAL TRANSFER.

May 20, 1943

C. Herbert Sandler, Esq.
Atlantic City, N. J.

Dear Mr. Sandler:

I have your letter of May 18th reading, in part:

"An individual wishes to transfer a 'C' License into a partnership consisting of himself and two others. In order to save fees of transfer, is it possible to make application in the name of the partnership instead of the individual at the time of the issuance of new licenses, considering that the limitation of 'C' Licenses would be in excess of the number now authorized by ordinance. It being my contention that the new license would be actually the same as the old and that the limitation, if in excess, would not prevent the issuance of said license."

According to our records, Section 5 of the City's ordinance adopted July 16, 1936, as amended by ordinance adopted August 10, 1939, reads as follows:

"Section 5. Retail consumption licenses shall be limited in number to 220 provided, however, that such limitation shall not affect the licenses presently issued or renewals of the same in subsequent years; no new retail consumption licenses shall be issued until, by relinquishment, revocation or otherwise, the number of retail consumption licenses shall be reduced below the number of 220 and then new licenses may only be issued until the limitation of 220 is reached."

It is clear that, under the quoted ordinance section, the limitation does not affect renewals of then existing licenses, but no new plenary retail consumption license may be issued in Atlantic City unless and until the number of such licenses outstanding shall be fewer than 220. The number now outstanding is 242.

A license is not a renewal unless it "...is of the same class and type as the expired or expiring license, covers the same licensed premises and is issued to the holder of the expired or expiring license...." (P. L. 1939, c. 281; italics ours.) If a license for the coming license year should be issued to the partnership in the manner contemplated in your letter, it would not be issued to the holder of the expired or expiring license but to other persons and, therefore, would constitute issuance of a new license in violation of the limitation ordinance.

So long as the number of licenses outstanding exceeds the fixed quota, the continuation of the licensed business by a new owner or owners can be accomplished only through transfer of the license. The transfer may occur first and be followed by renewal in the name of the new owners, or there may be renewal in the name of the present licensee and a later transfer to the new owners. Which course is followed depends upon the time when the change of ownership takes place. The important point is that when the change does take place a formal transfer is essential. (See Re Reichenstein, Bulletin 311, Item 11.)

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

By: Harold J. Saum
Legal Assistant.

5. DISCIPLINARY PROCEEDINGS - CHARGES OF FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACTS AND PERMITTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - DISMISSED ON FAILURE OF THE DEPARTMENT TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against
 THE LINCOLN PLEASURE CLUB, INC.
 11 Boston Street
 Newark, N. J.,
 Holder of Club License CB-47 (fiscal year 1941-42) and holder of Club License CB-4 (fiscal year 1942-43), issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Herman L. Levenson, Esq., Attorney for Defendant-Licensee.
 Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to the following charges:

"1. In your applications for license dated June 15, 1940 and June 17, 1941 filed with the Municipal Board of Alcoholic Beverage Control of the City of Newark, upon which Club Licenses CB-43 for the year 1940-41 and CB-47 for the year 1941-42 were granted, you falsely stated 'No' in answer to Question 30 therein, which asks, '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 in fact Leroy Williams had such an interest; said false statement being in violation of R. S. 33:1-25.

"2. Since on or about May 26, 1938 and until the present time, you knowingly aided and abetted Leroy Williams, a non-licensee, to exercise the rights and privileges of your license contrary to R. S. 33:1-26, in violation of R. S. 33:1-52."

Defendant club was organized in 1926 and incorporated in October of 1931. Numerous exhibits were offered in evidence by the Department. Among these were statements taken from the president, acting treasurer, caretaker and steward of the defendant-licensee. Bills for merchandise and services were also offered in evidence. Some of these bills were made out to the Lincoln Pleasure Club, some to Leroy Williams or "Lovey", as he was occasionally called, and one to George Williams. The latter was a bill from the Public Service Electric and Gas Company. A witness for the defendant explained that the company required a deposit which George Williams paid out of his own funds several years prior to the date when defendant obtained its first license. Thereafter, and unfortunately, these bills continued to be made out in his name. The telephone bill was apparently in the name of Leroy Williams for much the same reason. It further appears from the testimony that Leroy Williams, who stated that he was caretaker and steward, was also the chief financial officer. All moneys collected, including the dues of the members, were turned over to him.

From these funds, as well as from the money taken in at the bar, bills were paid in cash. Leroy Williams was paid a salary of \$10.00 or \$15.00 a week, which he deducted from the cash in his possession. The club did not have a bank account for many years. Witnesses for defendant claimed that there was never any money with which to open an account.

Notwithstanding the foregoing, there is considerable testimony in the record supporting the defendant's position that at the time the charges were preferred, it was a bona fide club operated for the benefit of its members and not as a "front" for Leroy Williams.

The manner in which the club was operated is certainly open to criticism. Re Lake Hartung Club, Inc., Bulletin 472, Item 8. The present proceedings may well be the product of the improper manner in which the defendant club licensee conducted its affairs. If the defendant has not already taken drastic steps to put its house in order, it must do so at once. In the meantime, I will give the licensee the benefit of the doubt existing in my mind with respect to the validity of the charges. The Department has not in these proceedings sustained the burden of proof.

Accordingly, it is, on this 18th day of May, 1943,

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

ALFRED E. DRISCOLL
Commissioner.

6. MORAL TURPITUDE - ILLEGAL OPERATION OF A STILL INVOLVES MORAL TURPITUDE.

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

In the Matter of an Application)
to remove Disqualification be-)
cause of a Conviction, Pursuant)
to R. S. 33:1-31.2.)

CONCLUSIONS
AND ORDER

Case No. 274.
- - - - -)

BY THE COMMISSIONER:

Petitioner pleaded non vult on November 25, 1936 to a charge that he possessed an unregistered still. He served fifty-two days, beginning January 15, 1937, of a sentence of sixty days in a county penitentiary.

Petitioner's testimony discloses that he sublet a building located in the rear of his factory to a friend. Upon the death of the latter it was discovered that a still had been erected on the premises. Petitioner explained that he knew nothing concerning this still but entered the non vult plea pursuant to advice of a layman in order to shield the family of his deceased friend from adverse publicity. In view of the plea entered in the Court of Quarter Sessions, the question of guilt or innocence of the applicant cannot be redetermined herein. The illegal operation of a still since repeal of the National Prohibition Act is a crime involving moral turpitude. See Re Case No. 240, Bulletin 531, Item 8. Applicant's record is otherwise clear.

Several character witnesses testified that the reputation of the petitioner in the community in which he lives is very good.

Inasmuch as he has apparently been an honest, law-abiding citizen for the past six years, I conclude that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 20th day of May, 1943,

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.

- 7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - 10 DAYS' SUSPENSION - SALE OF ALCOHOLIC BEVERAGES TO PERSONS ACTUALLY OR APPARENTLY INTOXICATED, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 20 - 40 DAYS' SUSPENSION - TOTAL: 50 DAYS.

In the Matter of Disciplinary)
 Proceedings against)
)
 SAMUEL SLANSKY)
 228 Richmond Street)
 Plainfield, N. J.,)
)
 Holder of Plenary Retail Consump-)
 tion License C-15 issued by the)
 Common Council of the City of)
 Plainfield.)
 -----)

CONCLUSIONS
AND ORDER

Ralph J. Slonim, Esq., by John P. Romer, Esq., Attorney for
 Defendant-Licensee.
 Milton H. Cooper, Esq., Attorney for Department of Alcoholic
 Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads not guilty to the following charges:

"1. During the night of January 15th, 1943, you sold alcoholic beverages to Lois Inez F---- and Shedrick S----, minors, in violation of R. S. 33:1-77.

"2. During the time aforesaid, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to Lois Inez F---- and Shedrick S----, persons under the age of twenty-one (21), and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon the licensed premises, in violation of Rule 1 of State Regulations No. 20.

"3. During the time aforesaid, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to Private James C----, a person actually or apparently intoxicated, and allowed, permitted and suffered the consumption of such alcoholic beverages by such person upon the licensed premises, in violation of Rule 1 of State Regulations No. 20."

Defendant-licensee admitted service of alcoholic beverages to Shedrick S---- and Lois Inez F---- by his employees on the date specified in the charges relating thereto. He put the Department to its proof that these persons, respectively, were less than twenty-one years of age at the time. Shedrick S---- testified that he was born in Black Mountain, North Carolina, and was nineteen years of age on the date of the hearing, February 1, 1943. When interrogated as to the date of his birth he replied February 1, 1922. This would make him twenty-one instead of nineteen years of age on the date of the hearing. Even allowing for the discrepancy, the service of liquor was made on January 15, 1943 before he had attained his majority. The other alleged minor, Lois Inez F----, stated that she was seventeen years of age, born May 28, 1925. Her testimony was corroborated by both her mother and father.

A person is competent to testify as to his or her own age, irrespective of the consideration that the fact of age is one of the essentials necessary to be established in order to constitute the violation charged. Cf. State v. Huggins, 83 N. J. L. 43; State v. Girone, 91 N. J. L. 498. I find the defendant-licensee guilty of charges (1) and (2).

Sergeant Wilfred F----, of the military police, testified that on January 15, 1943, while in the licensed premises, he became engaged in conversation with defendant-licensee concerning vermouth. While so engaged he noticed one Private James C----, described by him as apparently intoxicated, being served alcoholic beverages by the wife of the licensee. The sergeant testified that he left the tavern; summoned two investigators of the Alcoholic Beverage Control Department; and that upon his return with the investigators, Private C----'s condition had become worse. Despite the fact that the private was "staggering and weaving", as he expressed it, another glass of beer was being served to him by Mrs. Slansky. A few minutes later, the military police sergeant stated, Private C---- staggered through the swinging door, which separates the tavern proper from the rear room, stumbled and fell into a chair. When taken out into the street the testimony discloses that Private C---- was uncontrollable. Half of the time he was apparently on the street and half of the time on the sidewalk. His coat, trousers and shirt were reported in the testimony as unbuttoned. It was necessary to carry him from the police headquarters in order to put him on the military truck that had been summoned to take him back to camp.

The testimony of Sergeant Wilfred F---- describing the condition of Private James C---- and his subsequent behavior was corroborated substantially by Investigators Webster and Pfeiffer and by Private Joseph H---- and Private Eugene R----, who were in the licensed premises at the time. Investigator Webster also substantiated the sergeant's statement that he saw Private James C---- served with beer after he appeared to be intoxicated.

The defendant-licensee claimed that he was not on the premises after 8:00 P.M. on the night in question. He did not recall having any conversation with Sergeant Wilfred F---- nor did he remember seeing the sergeant, Private Joseph H---- or Private Eugene R---- that evening. When asked if he had seen Private James C----, he answered, "Not that night -- if he was there before 8:00 o'clock probably I saw him." His answers throughout were evasive and contradictory. There is no doubt in my mind that the defendant-licensee was present and did engage in a conversation about vermouth, as alleged by Sergeant Wilfred F---- of the military police.

The testimony of Mrs. Slansky, wife of the defendant-licensee, was unimpressive. Mrs. Slansky testified that she served beer to Private James C---- before 9:00 P.M. but that he had nothing to drink thereafter in the licensed premises. She replied, in answer to a question whether he left the tavern, "Yes, and I suppose he came back after. The second time he was in the back." Mrs. Slansky's testimony was replete with denials that any of the incidents referred to by Sergeant Wilfred F---- took place that night. This witness appeared absolutely certain of the things that might be helpful to her husband's interest but equally unsure of anything that might be detrimental thereto.

Private James C---- testified that he had been drinking whiskey from 8:00 o'clock in the morning on that day but that he was "pretty sober" when he came into defendant's tavern that night. He admitted obtaining a beer from Mrs. Slansky. He did not remember seeing Sergeant Wilfred F----, Privates Joseph H---- or Eugene R----, or Investigators Webster and Pfeiffer in defendant's premises that evening.

I am convinced that Private James C---- was intoxicated at the time alcoholic beverages were sold and served to him on the night in question. The sale of liquor to men in uniform when they are intoxicated, or apparently intoxicated, is not only a serious violation but an unpatriotic act. Hence, I shall order that the license be suspended for the balance of its term, and, further, if any license is issued to this licensee for these premises by the municipal issuing authority for the 1943-44 fiscal year, it shall stand suspended during the first fourteen days thereof.

Accordingly, it is, on this 20th day of May, 1943,

ORDERED, that Plenary Retail Consumption License C-15, heretofore issued by the Common Council of the City of Plainfield for premises 228 Richmond Street, Plainfield, be and the same is hereby suspended for the balance of its term, effective May 25, 1943, at 1:00 A.M.; and it is further

ORDERED, that if any license be issued to this licensee or other person for the premises in question for the 1943-44 fiscal year, such license shall be under suspension until July 14, 1943.

ALFRED E. DRISCOLL
Commissioner.

8. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - PERMITTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - FAILURE TO NOTIFY MUNICIPAL ISSUING AUTHORITY OF CHANGE IN FACTS, IN VIOLATION OF R. S. 33:1-34 - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT AFTER EXPIRATION OF 25 DAYS AND CORRECTION OF ILLEGAL SITUATION.

In the Matter of Disciplinary Proceedings against)

EVELYN FISCHER)
T/a VICTORY TAVERN)
6201 Hudson Avenue)
West New York, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-85 issued by the Board of Commissioners of the Town of West New York.)
-----)

Urban C. Powers, Esq., Attorney for Defendant-Licensee.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded guilty to the following charges:

"1. In your license application, filed with the Board of Commissioners of the Town of West New York and upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question 30, which asks: '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 John Dilworth and Michael Russo were so interested in that they were the real and beneficial owners of the licensed business; said false statement being in violation of R. S. 33:1-25.

"2. From February 14, 1942 and until July 3, 1942, you knowingly aided and abetted John Dilworth and Michael Russo to exercise, contrary to R. S. 33:1-26, the rights and privileges of your plenary retail consumption license in the Town of West New York, and from July 3, 1942 until the present time, you knowingly aided and abetted Michael Russo to exercise, contrary to R. S. 33:1-26, the rights and privileges of your license, thereby yourself violating R. S. 33:1-52.

"3. In your aforesaid application, you falsely stated 'No' in answer to Question 32, which asks: 'Does any individual, partnership, corporation or association hold any chattel mortgage or conditional bill of sale on any furniture, fixtures, goods or equipment used or to be used in connection with the conduct of the alcoholic beverage business to be operated under the license herein applied for?', whereas in truth and fact General Motors Acceptance Corporation held a conditional bill of sale, dated March 31, 1941, on certain equipment in the above licensed premises, given by Ray Alberty, the then licensee, who, pursuant to agreement dated January 29, 1942, assigned his equity in such conditional bill of sale to you; such false statement being in violation of R. S. 33:1-25.

"4. You failed to file with the Board of Commissioners of the Town of West New York, within ten days after the occurrence thereof, a written notice of changes occurring in the facts as set forth in your aforesaid license application, those changes being that, on or about September 21, 1942, American Cabinet and Billiard Company, and on or about November 3, 1942, Mountain Ice Company, each became the holder of a conditional bill of sale on certain equipment used or to be used in connection with the licensed business; such failure to file the aforesaid notices being in violation of R. S. 33:1-34."

The departmental file discloses that during January 1942 John Dilworth and Michael Russo agreed to purchase the licensed business from a former licensee. Russo's wife actually invested \$700.00 as Russo's share in the purchase of the business. During the negotiations Dilworth died and Russo consummated the transaction alone. However, the license was transferred to Evelyn Fischer, sister-in-law of Russo. It is admitted that Evelyn Fischer never had any interest in the business.

In mitigation of the violation, it was stated that the reason for having the license placed in the name of Evelyn Fischer was that Michael Russo was precluded by a covenant from doing business in the particular area where the licensed premises were located. He was under the impression that the covenant also extended to his wife. It is to be noted that the wife, apparently, was eligible to hold a license. It was also stated that the false answers alleged in charges (3) and (4) were due to ignorance and a misunderstanding.

If the unlawful situation had been corrected, I would suspend the license for a period of twenty days as to charges (1) and (2). I would suspend the license for an additional period of ten days as to charges (3) and 4), with a remission of five days for the guilty plea, thus making a total suspension of twenty-five days. However, the license remains in the name of Evelyn Fischer.

Since the "front" has not been corrected and the violation still exists, I have no alternative but to suspend the operation of the license for the balance of the term. Leave is hereby given to file with me a verified petition for the lifting of the suspension after a bona fide correction of the "front" situation has been effectuated, but in no event will the suspension be lifted prior to the expiration of twenty-five days from the effective date of the suspension.

Accordingly, it is, on this 21st day of May, 1943,

ORDERED, that Plenary Retail Consumption License C-85, issued by the Board of Commissioners of the Town of West New York to Evelyn Fischer, t/a Victory Tavern, for premises 6201 Hudson Avenue, West New York, be and the same is hereby suspended for the balance of its term, effective at 3:00 A.M. May 25, 1943; and it is further

ORDERED, that if it satisfactorily appears, on verified petition and proper proof, that the "front" herein has been fully and properly corrected, the said suspension may be lifted, provided that in no event shall such suspension be lifted prior to the expiration of twenty-five (25) days from the effective date of the suspension herein imposed.

ALFRED E. DRISCOLL
Commissioner.

9. DISCIPLINARY PROCEEDINGS - EXERCISING THE RIGHTS AND PRIVILEGES OF THE LICENSE PRIOR TO TRANSFER - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - PERMITTING KNOWN CRIMINALS ON LICENSED PREMISES - PERMITTING KNOWN FEMALE IMPERSONATOR ON LICENSED PREMISES - SALE OF ALCOHOLIC BEVERAGES TO MINOR - VIOLATION OF CONDITION IMPOSED ON LICENSE - LICENSE REVOKED.

VIOLATION OF A CONDITION IMPOSED ON A LICENSE IN ITSELF WARRANTS IMMEDIATE REVOCATION.

In the Matter of Disciplinary Proceedings against)

OCTAVIUS L. AMATO)
756 Harrison Avenue)
Harrison, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-44, issued to Anthony J. Nasta by the Town Council of the Town of Harrison, and later transferred to Octavius L. Amato.)
-----)

Octavius L. Amato, Pro Se.
Harry Castelbaum, Esq., Attorney for State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant has entered a plea of guilty to charges preferred against him by the Department, alleging in substance:

Violation of R. S. 33:1-26. Between August 18, 1942 and January 22, 1943, defendant exercised the rights and privileges of the license then held by Anthony J. Nasta for premises at 756 Harrison Avenue, Harrison, New Jersey.

Violation of R. S. 33:1-25. Defendant falsely answered Question 30 in his application for a transfer for his present license, thereby concealing a material fact, namely, that one Raymond Amato was the real and beneficial owner of a half interest in the business.

Violation of R. S. 33:1-52. Defendant knowingly aided and abetted Raymond Amato and John A. Uzzolino to exercise the rights and privileges of his license.

Violation of Rule 4 of State Regulations No. 20. Defendant permitted known criminals and persons of ill repute on the licensed premises.

Violation of Rule 4 of State Regulations No. 20. Defendant permitted a known female impersonator on the licensed premises.

Violation of R. S. 33:1-77, and Rule 1 of State Regulations No. 20. Defendant sold alcoholic beverages to a minor.

Defendant permitted Nicholas Amato on the licensed premises contrary to an express condition in his license. This condition was imposed when his current plenary retail consumption license was transferred to him on January 22, 1943.

The mere recital of the above violations, confessedly admitted by the defendant, is sufficient support for an order revoking his plenary retail consumption license.

One important fact, however, warrants consideration. On August 20, 1942, defendant applied to the Town Council of the Town of Harrison for a transfer of the plenary retail consumption license then held by Anthony J. Nasta. The Town Council denied the application for a transfer on the ground that defendant, while a youth of nineteen, had once been convicted of a crime (loitering - sentence suspended), and that his brother Nicholas Amato had an exceptionally bad criminal record.

The defendant thereupon took an appeal to the Commissioner from the decision of the municipal issuing authority. R. S. 33:1-26. After carefully considering the record as it was developed on the appeal, and following a finding that defendant was qualified (R. S. 33:1-25) to hold a license, the Commissioner, on January 18, 1943, reversed the decision of the municipal issuing authority and directed it to transfer the license to the defendant upon the following express condition:

"This transfer from Anthony J. Nasta to Octavius L. Amato is subject to the condition that Nick Amato shall not be permitted on the licensed premises at any time for any reason whatsoever."

The acceptance by the defendant of the restriction imposed on his license, and his promise to comply with the same, was a condition precedent to the order directing the transfer of the license. A condition imposed on a license must be scrupulously obeyed. Defendant's disregard of this condition, as evidenced by the admitted presence of Nicholas Amato on the premises, in itself is sufficient to warrant the immediate revocation of his license.

The defendant's outrageous conduct confirms the opinion heretofore expressed by the municipal issuing authority in the appellate proceedings previously referred to. In my opinion in those proceedings I stated:

"Appellant has had nothing to do with the past conduct of the licensed premises. If he is given an opportunity to conduct the business and evidence is found to substantiate these or other complaints, disciplinary proceedings may be instituted to suspend or revoke, or respondent may refuse to renew the license."

The evidence has now been found, disciplinary proceedings have been instituted, and the license will be revoked. The defendant, who once appealed to the Commissioner in the name of justice, will now receive his just deserts -- and speedily.

Accordingly, it is, on this 24th day of May, 1943,

ORDERED, that Plenary Retail Consumption License C-44, issued to Anthony J. Nasta by the Town Council of the Town of Harrison and later transferred to Octavius L. Amato, for premises 756 Harrison Avenue, Harrison, N. J., be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

10. MORAL TURPITUDE - CRIME OF LARCENY AND RECEIVING NORMALLY INVOLVES MORAL TURPITUDE.

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

In the Matter of an Application)
to remove Disqualification be-)
cause of a Conviction, Pursuant)
to R. S. 33:1-31.2.)

CONCLUSIONS
AND ORDER

Case No. 272.)
-----)

BY THE COMMISSIONER:

Petitioner in this proceeding prays that his disqualification resulting from the conviction of a crime be lifted pursuant to R. S. 33:1-31.2.

On November 27, 1934, after a plea of non vult, petitioner was convicted in the Court of Quarter Sessions of the crime of larceny and receiving. Petitioner was placed on probation for a period of three years and continued to remain under the supervision of the Essex County Probation Service until March 5, 1937, when he was discharged by order of the court. The crime of larceny and receiving normally, as in this case, involves the element of moral turpitude.

The facts surrounding the crime disclose that petitioner was employed in a paint factory. While thus employed, he became involved with six other employees in the theft of some paint. The Chief Probation Officer reports that petitioner "and two others were only slightly involved and were more or less enticed into the offense by other co-defendants." Petitioner asserts that he never stole anything, although he concedes that he unwittingly accepted paint as a gift, which it later developed had been stolen by his fellow employees.

At the hearing, three character witnesses testified that they have known petitioner for the last five years. Each of these witnesses testified that petitioner is known to him as honest, respectable and law-abiding. The Acting Chief of Police of the city in which petitioner resides reported to the Department that there have been no complaints concerning petitioner's conduct since 1934, and that the record does not disclose any pending investigation.

Petitioner has been gainfully employed at all times subsequent to his trouble in 1934 and states, under oath, that, except for the occasion described above, he has never been in any trouble of any nature.

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

Accordingly, it is, on this 24th day of May, 1943,

ORDERED, that petitioner's disqualification be lifted in accordance with the provisions of R. S. 33:1-31.2.

Alfred C. Driscoll
Commissioner.