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

BULLETIN 495 MARCH 3, 1942

1. APPELLATE DECISIONS - MARTINO v. GARFIELD.

RAYMOND G. MARTINO,)
Appellant,)
-vs-) ON APPEAL
CITY COUNCIL OF THE CITY) CONCLUSIONS AND ORDER
OF GARFIELD,)
Respondent.)

Carmen M. Belli, Esq., Attorney for Appellant.
Henry L. Janowski, Esq., Attorney for Respondent.
Benjamin H. Stadtmauer, Esq., Attorney for Objectors.
Benjamin Greene, Esq., Attorney for transferor, Samuel Halkovitch.
Philip A. Oliva, Esq., Attorney for Anthony Kasica, Objector.

BY THE COMMISSIONER:

This appeal is taken from respondent's refusal to grant a person to person and place to place transfer of a plenary retail consumption license.

The license in question was originally issued to Samuel Halkovitch for premises at 163 Van Winkle Avenue, Garfield. Appellant duly applied for a transfer of said license to himself and to premises located at 320 River Road, Garfield. The two premises are approximately one-half mile apart.

On December 9, 1941 respondent denied appellant's application for the stated reason that "there are a sufficient number of liquor licenses in this area." The vote on the motion to deny the application was:

Ayes	-	5
Nays	-	1
Absent	-	2

The place to which appellant seeks to transfer the license is a corner store located in a two-story brick building at the northeast corner of River Road and Monroe Street. This building, which is owned by appellant's father, has two other stores, both of which face on Monroe Street. One of these stores, known as 5 Monroe Street, was formerly rented to Mary Schott, the holder of a consumption license. In November 1941 Mrs. Schott transferred her license to an adjoining store located in a building owned by another individual and known as 7 Monroe Street. Thereafter, appellant herein filed the application which is the subject of this appeal. It also appears from the evidence that one Anthony Kasica holds a consumption license for a building located on River Road and separated from appellant's premises only by the width of the road.

This section of Garfield is devoted principally to business and industrial purposes. A large chemical factory occupies a square block nearby. There are also a number of low rental tenement houses in this section of the city. The entire section has been characterized by one of appellant's witnesses as "the lowest district that we have in the City of Garfield."

The question as to whether three consumption licenses instead of two, as formerly, are needed in a section of this type is a matter to be decided in the sound discretion of the local issuing authority. Councilman Cimino, the only member who voted against the resolution denying the application, testified that he felt that the section could carry three saloons, whereas Councilman Bagolie, one of the five who voted for the resolution, testified that the "two taverns would take care of the area, including the industry." Upon the evidence presented, the most that has been shown is a difference of opinion as to the necessity of a third consumption license. I conclude that appellant has not sustained the burden of proof in showing that respondent abused its discretionary power in denying the transfer.

Appellant also alleges discrimination in that respondent has issued and renewed three licenses in close proximity to each other in each of two other sections of the city. All of these licenses were originally issued more than four years ago. No transfers have recently been made which would increase the number of licenses in any of these sections. It has been held that, where an issuing authority, subsequent to denial of one application, issues additional licenses in the same vicinity, the contention that the licensing of additional premises is socially undesirable falls of its own weight. Licata v. Camden, Bulletin 342, Item 1, and cases therein cited. However, that is not the situation in the present case. Transfer of a license to other premises is a privilege not inherent in the license. Van Schoick v. Howell, Bulletin 120, Item 6. Even if congestion of licenses was originally permitted in other sections of the city, it does not follow that respondent must now create a congestion of licenses in the vicinity of River Road and Monroe Street. I conclude that there was no undue discrimination against appellant.

Two other points may be briefly considered:

(1) It is clear that appellant's application was not denied because of a proposed limiting ordinance which was passed on first reading prior to December 9, 1941 and which was not adopted on final reading at a meeting held subsequent to that date.

(2) Appellant's application was considered after a hearing held on December 9, 1941, at which all interested parties were heard. The evidence is not sufficient to show that appellant was denied a fair and impartial hearing on the merits, as alleged in the petition of appeal.

For the reasons aforesaid, the action of respondent is affirmed.

Accordingly, it is, on this 20th day of February, 1942,

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

ALFRED E. DRISCOLL,
Commissioner.

2. ADVERTISING - PLACARDS - DEFENSE BONDS AND STAMPS - RULING IN RE COHEN, BULLETIN 488, ITEM 1, MODIFIED.

February 21, 1942

John Johns, Vice-President,
Batten, Barton, Durstine & Osborn, Inc.,
New York, N. Y.

My dear Mr. Johns:

I have before me your letter of February 20th inquiring whether the F. & M. Schaefer Brewing Company may distribute to New Jersey retail licensees placards reading:

"Buy
DEFENSE
STAMPS
REGULARLY
with your change".

An examination of one of these placards discloses that it is quite similar in appearance and workmanship to Defense Stamp placards distributed by the Government. The placard submitted is pleasing in appearance, bears the traditional Minuteman on its face, and the color is red, white and blue.

I am further advised that the placard in question has been approved by the Defense Saving Staff of the Treasury Department and by the Alcohol Tax Unit of the same Department.

The placard carries no advertising on its face, and the only place where the name "Schaefer" appears is on the back. The printing on the back is as follows:

"HOW TO GET STAMPS FOR RESALE

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1. Obtain Defense Stamps at your local Post Office.
2. Buy a small quantity until you know your needs.
3. Stamps come in 10¢, 25¢, 50¢, $1. and $5. denominations. We suggest you start with the 10¢ and 25¢ stamps.
4. Stamp albums for your customers are supplied free of charge by your Post Office.
5. When you have sold your supply of Stamps, get more from your Post Office.
6. For extra Defense Cards like this, ask your Schaefer salesman.

DISPLAY THIS CARD PROMINENTLY
AND HELP WIN THE WAR"

The type used is comparable to small pica and the name of your client is correspondingly inconspicuous.

It was ruled in Re Cohen, Bulletin 488, Item 1, that

> "the advertising for the sale of Defense Bonds and Stamps, appearing in the show windows, must be confined to the use of placards furnished by the Federal Government. In other words, the licensee will not be permitted to make additions to the placards as furnished to him, or to use the same in combination with, or as an integral part of, an advertisement for the sale of alcoholic beverages.
>
> "On the inside of the licensed premises, we will permit licensees to advertise that Defense Stamps or Bonds may be purchased on the premises."

This Department is in entire sympathy with the purpose of the Schaefer Brewing Company and others who desire to cooperate with the Defense Saving Staff in promoting the sale of Defense Stamps, and therefore approves the form of the placard submitted by you.

The ruling in Re Cohen, supra, is modified accordingly.

In all such cases where the approval of this Department must be first sought and obtained, we will require:

(1) The face of the placard to be devoted exclusively to promoting the sale of Defense Stamps and/or Bonds;

(2) Placards should be approved by the Defense Savings Staff of the Treasury Department;

(3) Promotion copy on the reverse side to be limited to the name of the company from whom the placard may be obtained. This to be in small type.

Accordingly, this Department has no objection to the display of placards such as yours, either inside licensed premises or in the show windows of licensed premises.

Here's hoping

you

KEEP THEM BUYING!

ALFRED E. DRISCOLL,
Commissioner.

3. MORAL TURPITUDE - THEFT OF AUTOMOBILE - ENTERING AND ROBBING - INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - FAILURE TO AFFIRMATIVELY PROVE GOOD CONDUCT FOR FIVE YEARS - PETITION DENIED.

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

CONCLUSIONS AND ORDER

Case No. 192.

BY THE COMMISSIONER:

Petitioner, now about twenty-nine years of age, acquired a long criminal record when between the ages of seventeen and twenty-four.

In 1929 he was convicted of larceny, involving the theft of an automobile in which he and some companions took a joy-ride for which he was placed on probation for five years. In July 1930, while still on probation, he was convicted of possessing stolen property (two suits) and sentenced to pay a fine of $50.00 or serve 100 days in jail. He was discharged in August 1930, but again arrested in September 1930, after he and a companion entered a store and stole $7.00 from the cash register. While escaping from the store, he was shot in the leg by a police officer. Convicted of this crime, his probation was extended for an extra period of three years. In 1931 he was fined $25.00 for loitering. Later in the same year he was convicted of shooting dice for money. In 1935 he was convicted of loitering and sentenced to five days in jail.

Petitioner's theft of an automobile, entering and robbing a store, and possessing the stolen suits, are each crimes which involved moral turpitude, and hence disqualify him from working for a liquor licensee in this State. R. S. 33:1-25, 26.

Petitioner now seeks removal of such disqualification, pursuant to R. S. 33:1-31.2, upon claim that he has been law-abiding since 1935. In view of his past record, petitioner must establish to my satisfaction, by clear and convincing evidence, that his conduct during at least the past five years has been good and that he has been gainfully employed in legitimate pursuits, or has made a sincere effort to obtain such employment. The mere fact that he has not been convicted of a crime during such period does not, in itself, entitle him to such relief. Re Case No. 182, Bulletin 492, Item 8.

The evidence shows that from 1935 until the latter part of 1938, petitioner's only employment was on W.P.A. projects; afterwards, for a short time, he worked occasionally as a helper on a moving van. In the latter part of 1939 he was re-employed by the W. P. A. and discharged the early part of 1941. He testified that since then he has been unemployed and on relief.

His character witnesses testified that they did not know anything about his background or current activities. They are merely tradesmen whose testimony, in general, was limited to statements that they had no trouble in their personal dealings with him. Obviously, this cannot be considered as evidence that petitioner is regarded in his community as of good reputation, industrious, and law-abiding.

Although petitioner may not have been at fault in failing to obtain steady work in private industry during the past five years, there is no evidence before me that he really tried and did not succeed; nor is there any convincing evidence that during the past five years he has entirely abandoned his waywardness and entered upon law-abiding paths. Indeed, at the hearing, the attorney for the municipality wherein petitioner resides objected to the removal of petitioner's disqualification and urged that because of petitioner's lengthy record, he was not a desirable type of person to have connected with the liquor industry.

In view of the above, petitioner has not established to my satisfaction that his connection with the liquor industry will not be contrary to public interest.

Accordingly, the petition is denied.

ALFRED E. DRISCOLL,
Commissioner.

Dated: February 20, 1942.

4. ALIENS - ABROGATION OF TRADE TREATIES BY DECLARATION OF WAR DISQUALIFIES ALIENS PROTECTED THEREBY FROM SELLING OR SERVING LIQUOR IN NEW JERSEY IRRESPECTIVE OF CLASSIFICATION AS ENEMY ALIENS - HEREIN OF FORMER AUSTRIAN NATIONALS.

February 21, 1942

Aro G. Gabriel, Esq.,
Union City, N. J.

My dear Mr. Gabriel:

I have before me your letter of February 20th together with enclosure, being copy of a letter addressed to Mr._____ by Earl G. Harrison, Special Assistant to the Attorney General, Department of Justice, Washington, D. C.

I have no doubt that Mr._____ is an honest, upright man with an excellent reputation, as set forth by you in your letter. Unfortunately for Mr._____, however, he is an alien within the meaning of the New Jersey statutes, and as such is not qualified to serve or sell alcoholic beverages.

The fact that Mr._____ was formerly permitted to engage in these activities was due to the existence of certain reciprocal trade agreements which, during the period they were operative, suspended the provisions of the New Jersey statute respecting the employment of aliens. The declaration of war, however, abrogated the trade treaties in question and, as a result, the New Jersey statute once more became operative.

The qualification of Mr._____ under our law does not turn on whether or not he is an enemy alien, but whether he is, in fact, an alien.

If the Special Assistant Attorney General will refer to the records of the State Department, he will discover that after Austria was taken over by Germany, it was held that "former Austrian nationals" were entitled to the same treatment as other German nationals under the Treaty of Friendship, Commerce and Consular Rights, between the

United States and Germany (signed December 8, 1933, and amended by Agreement signed June 3, 1935). Therefore, when the latter treaty was abrogated by the declaration of war, "former Austrian nationals" lost the protection of the same.

The classification of "enemy aliens" made in Washington has frequently been misunderstood. For example, Rumania has declared war upon the United States yet citizens of Rumania have not, as far as I know, been classified as enemy aliens. So also in the case of Hungary. Likewise, some of our citizens have had difficulty in appreciating the distinction between "former Austrian nationals" and "citizens of Germany." In most instances, refugees from all of these countries who are now within our borders are law-abiding and have as much contempt as we have for the terrorists who dominate their countries. In the few cases where this is not so, it is quite possible that a Rumanian or Hungarian national whose country has declared war upon us may be as dangerous to our way of life as a German national. It is to be expected that reasonable precautions must be taken. In some instances, the innocent will be inconvenienced by the adoption of safeguards calculated to protect the country from alien enemies in the service of a foreign government.

In due course of time it is anticipated that the Department of Justice and the State Department will clarify their respective positions.

Very truly yours,
ALFRED E. DRISCOLL,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - SALE BY CLUB LICENSEE TO PERSONS NOT MEMBERS OR GUESTS - PREVIOUS RECORD - 10 DAYS' SUSPENSION - SLOT MACHINE - 20 DAYS' SUSPENSION BY REASON OF PREVIOUS RECORD - TOTAL: 30 DAYS, LESS 5 FOR GUILTY PLEA.

CLUB LICENSEES - HEREIN OF THE SERIOUSNESS OF SALES TO NON-MEMBERS.

In the Matter of Disciplinary Proceedings against

DEMOCRATIC CLUB OF THE 11th WARD,
1014 North 27th Street,
Camden, N. J.,

Holder of Club License CB-28, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

CONCLUSIONS AND ORDER

Benjamin J. Dzick, Esq., Attorney for Defendant-Licensee.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleaded guilty to charges alleging (1) that on November 9, 1941 it permitted two five cent jack-pot slot machines on its licensed premises in violation of Rule 7 and Rule 8 of State Regulations No. 20, and (2) that on the same date it sold alcoholic beverages to persons who were not bona fide members or bona fide guests of members, in violation of Rule 5 of State Regulations No. 7.

The file in this case shows that, on November 9, 1941, Investigators Wagi and Webster of this Department visited the licensed premises. Alcoholic beverages were sold to them despite the fact that they were not members or guests of members of defendant association. While present in the licensed premises, the investigators also discovered and played the two nickel slot machines.

The licensee in this case paid $100.00 for its club license. A consumption licensee in the City of Camden pays $500.00 for a license. Clubs which value the much reduced rate for which they obtain club licenses must confine sales and service of liquor strictly within the limited privileges conferred or else face the unpleasantry of a substantial suspension, or, if the facts warrant, a revocation.

As to penalty: I have carefully reviewed the penalty heretofore imposed for a first violation of the rule prohibiting sales to non-members by a club licensee. In the ordinary case, proof of such violation has, in most cases, resulted in a five day suspension.

However, in 1937 the licensee in this case was found guilty of selling alcoholic beverages on Sunday in violation of the local ordinance, and, in October 1939, it pleaded guilty to a similar charge as well as to a charge of selling to non-members. Because of this previous record, the penalty for the sale to non-members in this case will be doubled.

The usual penalty for possession of slot machines is ten days. By virtue of the previous record the penalty for this charge will be twenty days, making a total penalty of thirty days.

By entering a guilty plea, the licensee has saved the Department the time and expense of proving its case, for which five days of the penalty will be remitted.

In my opinion, the penalties heretofore imposed for violation of the rule prohibiting sales to non-members by club licensees have not been commensurate with the seriousness of the violation, the social consequences attendant thereto, and the unfairness of the competition that follows. In future cases coming before me, club licensees who have or persist in the violation of this rule may expect more drastic penalties.

Accordingly, it is, on this 24th day of February, 1942,

ORDERED, that Club License CB-28, issued to Democratic Club of the 11th Ward, for premises 1014 North 27th Street, Camden, by Municipal Board of Alcoholic Beverage Control of the City of Camden, be and the same is hereby suspended for a period of twenty-five (25) days, commencing March 2, 1942, at 2:00 A.M. and terminating March 27, 1942, at 2:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - SALE OF AN ALCOHOLIC BEVERAGE TO A MINOR - 10 DAYS' SUSPENSION - FRONT - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING THE INTEREST OF NON-RESIDENT - AIDING AND ABETTING A NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - 10 DAYS' SUSPENSION - TOTAL: 20 DAYS.

DISCIPLINARY PROCEEDINGS - SALE OF AN ALCOHOLIC BEVERAGE TO A MINOR - PREVIOUS DISSIMILAR VIOLATION - 15 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against

PHILIP COHEN,
T/a HILL TOP,
State Highway Route #30,
Township of Raritan
(Hunterdon County),
P. O. Flemington, N. J.,

Holder of Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Raritan (Hunterdon County).

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In the Matter of Disciplinary Proceedings against

ALFRED WAGNER,
T/a WAGNER'S TAVERN,
State Highway Route #30,
Township of Raritan
(Hunterdon County),
P.O. Flemington, N. J.,

Holder of Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Raritan (Hunterdon County).

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CONCLUSIONS AND ORDER

Nathan Duff, Esq., Attorney for Defendant-Licensees.
Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

These disciplinary cases involve common issues of fact and hence were heard and are being decided together.

In both cases the defendants have pleaded not guilty to charges that, on January 15, 1941, an alcoholic beverage was sold at their respective taverns to Paul Alpaugh, a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations 20.

The evidence discloses that, on the evening of January 15, 1941, Paul Alpaugh, then just turned twenty, was driving in a car with Gilbert Schenck, a fourteen year old friend. From the testimony of both boys it appears that, during their drive, Alpaugh bought a pint bottle of wine at Wagner's Tavern and later a quart bottle at the Hill Top tavern, Schenck remaining in the car while Alpaugh made these purchases.

From Alpaugh's testimony it further appears that he went to a third tavern that night (apparently after taking Schenck home) and bought an additional bottle of wine. The licensee of this last tavern has already pleaded guilty in proceedings before me for having made such sale, and received a suspension of his license. Re Meseroll, Bulletin 481, Item 7.

As to the two taverns in question in the present proceedings, Alpaugh identified the licensee at Wagner's Tavern and Ben Cohen, son of the present licensee at the Hill Top, as being the persons who sold to him at those places.

The defense has produced testimony tending to show that these identified persons were not at the licensed premises at the time in question. From this fact the defense apparently argues that the boys' story that they stopped at these two taverns and that Alpaugh obtained wine there should not be accepted as accurate.

I cannot agree with this view. The boys seem undeniably familiar with the location of these taverns, and hence could scarcely have been mistaken about having stopped there. Moreover, no reason appears, nor is any suggested, why they should lie about where they went and what they did. Their story sounds consistent and sincere.

Consequently, I find that, although Alpaugh may perhaps have been mistaken in his identification of the specific persons selling to him at the two taverns in question, he in fact bought wine as claimed. His possible mistake as to the particular persons selling is not fatal. Re LaCorte, Bulletin 469, Item 1. Since he bought at these taverns in the usual course of business, the seller in each case was presumably at least an employee there. Licensees are strictly accountable (in disciplinary proceedings) for the violations of their employees. See Re Wallack, Bulletin 494, Item 2.

Hence I find the defendants guilty as charged.

In penalty for such violation, Philip Cohen's license for the Hill Top will, since there is no record of any prior conviction for that tavern, be suspended for ten days. See Re Meseroll, supra (where five days were remitted for entry of a guilty plea).

At this point it should be noted that the above violation of selling to a minor at the Hill Top actually occurred when the license for that tavern (i.e., last year's license) was in the name, not of the present licensee, Philip Cohen, but his son, Ben Cohen. It is clear that such fact does not exonerate or lessen the present licensee's accountability for that violation. Under Rule 2 of State Regulations 15, a subsequent licensee may be held responsible for the violations of his predecessor at the licensed premises. Moreover, Ben Cohen, in previously being the licensee at this tavern, was merely a "front" for his father, Philip Cohen; and hence the latter may now properly be held fully accountable for violations which occurred during that time.

For such "front," additional charges were brought against Philip Cohen alleging that the son, when applying for license, had falsely concealed his father's interest in the tavern, contrary to R. S. 33:1-26; that the son had allowed the father to exercise the rights and privileges of the son's successive licenses for the tavern, contrary to R. S. 33:1-26, 52; and that the father actually exercised such rights and privileges, contrary to R.S. 33:1-26.

Philip Cohen has pleaded guilty to these charges and admits that he concocted the "front" in March 1934, when the first license was obtained for the Hill Top, because he then lacked the requisite five years' residence in this State to hold the license in his own name (R. S. 33:1-25); that, even though later acquiring such residence, he continued the license in his son's name so that, in event of the father's death, the son could at once carry on the business; that, after this Department's investigation in the matter, he (the father) corrected the "front" by obtaining the license for the current term in his own name.

For such "front" (originally devised to evade the five years' residence requirement), in view of the guilty plea and the actual correction, the penalty will be an additional ten-day suspension of the Hill Top license, thus making, when added to the ten-day suspension for the above sale to a minor, a total suspension of twenty days. Re Byer, Bulletin 477, Item 4.

With respect to Wagner, I note that his license was suspended for four days in 1937 by the Raritan Township Committee for selling during prohibited hours on Sunday in violation of local ordinance. In view of that record, his license will, for his present violation of selling to a minor, be suspended for fifteen days.

Accordingly, it is, on this 24th day of February, 1942,

ORDERED, that Plenary Retail Consumption License C-2, heretofore issued by the Township Committee of the Township of Raritan (Hunterdon County) to Philip Cohen, t/a Hill Top, for premises on State Highway Route #30 in the said Township, be and the same is hereby suspended for a period of twenty (20) days, commencing March 2, 1942, at 2:00 A.M., and ending at 2:00 A.M. March 22, 1942; and it is further

ORDERED, that Plenary Retail Consumption License C-5, heretofore issued by the Township Committee of the Township of Raritan (Hunterdon County) to Alfred Wagner, t/a Wagner's Tavern, for premises on State Highway Route #30 in the said Township, be and the same is hereby suspended for a period of fifteen (15) days, commencing March 2, 1942, at 2:00 A.M., and ending at 2:00 A.M. March 17, 1942.

ALFRED E. DRISCOLL,
Commissioner.

7. APPELLATE DECISIONS - E AND W CORPORATION v. LONG BRANCH.

E AND W CORPORATION, T/a ELLENSON'S CAFE,
Appellant,
-vs-
BOARD OF COMMISSIONERS OF THE CITY OF LONG BRANCH,
Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Tumen & Tumen, Esqs., by Jonas Tumen, Esq., Attorneys for Appellant.
Leo J. Warwick, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the suspension of appellant's plenary retail consumption license for its tavern at 118 Broadway, City of Long Branch, for a period of ninety (90) days.

At the hearing below, the appellant was charged as follows:

"1. On October 11, 1941, said licensee did, on the premises known as Ellenson's Cafe, 118 Broadway, Long Branch, New Jersey, sell and serve alcoholic beverages to persons actually or apparently intoxicated in violation of Rule 1 of State Regulation #20.

"2. On October 11, 1941, said licensee did on the premises known as Ellenson's Cafe, 118 Broadway, Long Branch, New Jersey, permit the service of alcoholic beverages to persons actually or apparently intoxicated in violation of Rule 1 of State Regulation #20.

"3. On October 11, 1941, said licensee did on the premises known as Ellenson's Cafe, 118 Broadway, Long Branch, New Jersey, allow, permit and suffer the consumption of alcoholic beverages by persons actually or apparently intoxicated in violation of Rule 1 of State Regulation #20.

"4. On October 12, 1941, said licensee did on the premises known as Ellenson's Cafe, 118 Broadway, Long Branch, New Jersey, allow and permit a disturbance in violation of Rule 5 of State Regulation #20.

"5. On October 12, 1941, said licensee did on the premises known as Ellenson's Cafe, 118 Broadway, Long Branch, New Jersey, allow and permit an altercation and brawl among persons in violation of Rule 5 of State Regulation #20.

"6. On or about May 24, 1941, said licensee did on the premises known as Ellenson's Cafe, 118 Broadway, Long Branch, New Jersey, allow and permit a female employee to accept alcoholic beverages at the expense of customers and patrons in violation of Rule 22 of State Regulation #20.

"7. On or about May 24, 1941, said licensee did on the premises known as Ellenson's Cafe, 118 Broadway, Long Branch, New Jersey, allow and permit a female employee to accept alcoholic beverages as a gift from customers and patrons in violation of Rule 22 of State Regulation #20.

The respondent Board of Commissioners of the City of Long Branch, after hearing duly held, found the appellant guilty of Charges 4 to 7 inclusive, and ordered the suspension of the license as aforesaid.

In its petition, the appellant alleges, as a reason for reversal, that the action of the respondent was erroneous, in that:

"the findings of the said respondent was contrary to the weight of the evidence, and that the evidence produced failed to establish the appellant guilty of the charges beyond a reasonable doubt, and said evidence failed to preponderate in favor of the said charges, and that the findings of the respondent will cause irreparable damage and injury to the appellant."

The testimony produced by the appellant and respondent at the hearing de novo before me is in hopeless conflict. The appellant called eight witnesses and the respondent five. A careful observance of the witnesses on the stand and a consideration of their testimony left me with the impression that their testimony was not in every instance in conformity with that given below. In particular, there was a marked lack of candor and frankness on the part of one of the respondent's witnesses.

Sergeant Henry Feeney of the Long Branch Police Department testified that he received a radio call to go to the Ellenson Cafe to assist Officer Bonoforte, in the early hours of October 12, 1941. Upon arriving at the cafe, he was told by one Sam Ellenson that "Rocky (Bonoforte) was having trouble with a woman in the back." The woman in question was found by the witness lying on the floor with her arms around the leg of a table, screaming and hollering that she was not going to be put out. Seated at the table were a fisherman and three or four soldiers who, the witness narrated, were lending, at the least, moral support to the woman by reiterating that she was not going to be put out. On the other side of the room there was apparently in process of celebration a birthday party of some twelve or fifteen persons. The Sergeant testified that some of these were urging the police to "throw the woman out." The same witness suggested that "Pop" Ellenson was terribly excited and lent vocal support to those in favor of the forcible ejectment of the woman. Others in the cafe, including a number of enlisted men, appear to have taken sides and joined in the festivities. A riot appears to have been in the making out of the dangerous brew of too much liquor and too little supervision. As the police describe the scene "they were all noticeably drinking" in the cafe, and "there were three or four men that acted drunk to me." In any event, Sergeant Feeney apparently felt that more police were necessary, and called in two additional, making four in all.

Appellant's witnesses, while acknowledging that the woman in question had caused some trouble and had previously given a rather indecent display of her person while on the dance floor, and while further conceding that this same woman had engaged in a "brushing" or "bumping" affair with one of the participants in the birthday party,

nonetheless had no recollection of any catcalls nor were they apparently aware that there were all of the makings of a riot, as testified to by the police. Be that as it may, it is apparent from the testimony that it was necessary for the police, in order to avoid a serious outbreak of hostilities, to close the establishment -- so as to permit the removal of the female table-leg hugger by way of the back door.

The testimony with respect to the charges in this case is necessarily projected against the background of other testimony which, while not directly related to the charges in question, nonetheless paints a rather vivid picture of the character of the establishment and the conduct of the same, all of which lends credence to the respondent's testimony in support of the charges. Sergeant Feeney testified that there were times when it was necessary for him to call for the M. P.'s to come over and disperse the soldiers frequenting the cafe when there were too many for the police to handle themselves. Intoxicated soldiers, he states, were found there at times and these were turned over to the M. P. Officer McGarvey, on October 11th (the night in question), saw two men fighting in the doorway of the cafe and, before he could get across the street, one of them, a soldier, came "flying out of the door and landed on the sidewalk." The latter, he testified, was under the influence of liquor. Other testimony indicates that Ellenson himself seems to have had difficulty in tempering his appetite for liquor.

With respect to the charge of permitting a female employee to accept alcoholic beverages at the expense of customers and patrons in violation of Rule 22 of State Regulations No. 20, the testimony of a former waitress employed by the licensee, and incidentally the woman who subsequently provoked the disturbance on the night of October 11th and morning of the 12th, was offered by the respondent. This woman testified that she had been purchased drinks at the expense of customers and patrons while so employed. She stated on the stand that this was done with considerable frequency and quite openly. While the credibility of this witness was seriously attacked by the appellant, nonetheless, with respect to charges 6 and 7, namely, permitting a female employee to accept alcoholic beverages at the expense of customers and patrons, or as a gift from the same, her testimony appears plausible and believable.

Under our rules governing appeals, the burden of establishing that the action of the respondent was erroneous and should be reversed rests with the appellant. The appellant has not sustained that burden.

The only question remaining to be disposed of is that of the penalty. I am not warranted in moderating penalties imposed by the issuing authority except in those cases where it appears that the penalty imposed below is "clearly excessive." The penalty imposed in this case was undoubtedly a stern one. Bearing in mind, however, all of the circumstances, the location of the cafe, its proximity to Fort Monmouth, and the fact that it was frequented by soldiers, I am not warranted in finding the suspension was "clearly excessive."

With respect to charges 6 and 7, it was the duty of the officers of the corporate licensee to know what was taking place on the premises and to take such steps as were necessary to prevent a violation of the regulations. With respect to charges 4 and 5, it was clearly the duty of the officers of the corporate licensee to maintain such decorum as was necessary to prevent the outbreak of altercations, disturbances and brawls among the patrons. The location

of the tavern in the neighborhood of a military post and the character of the patrons impressed added responsibilities upon the appellant corporation and required a standard of conduct which it unfortunately failed to maintain.

The action of the respondent is hereby affirmed.

Accordingly, it is, on this 27th day of February, 1942,

ORDERED, that the ninety-day suspension imposed by respondent on appellant's plenary retail consumption license C-16 in this case, which suspension was held in abeyance pending disposition of the instant appeal, is hereby restored, to commence on March 4, 1942, at 3:00 A.M., and to terminate on June 2, 1942, at 3:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCIES IN PROOF AND SOLID CONTENT - LICENSEE, OUT OF WHISKEY ORDERED, REFILLED ONE BOTTLE - 20 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against

MARTIN LENARTOWICZ,
914 N. Olden Ave.,
Trenton, N. J.

Holder of Plenary Retail Consumption License C-209, issued by the Board of Commissioners of the City of Trenton.

CONCLUSIONS AND ORDER

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Martin Lenartowicz, defendant-licensee, pro se.
G. George Addonizio, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleaded guilty to charges alleging (1) that, on November 3, 1941, he possessed illicit alcoholic beverages in violation of R. S. 33:1-50, and (2) that, on or about the same date, he bottled alcoholic beverages in violation of R. S. 33:1-78.

The file discloses that, on November 3, 1941, investigators of this Department seized at the licensed premises one opened bottle labeled "Carstairs White Seal Blended Whiskey 86.8 Proof." Analysis by the Department chemist shows that the proof of the contents of the seized bottle was slightly higher and the solid content thereof also slightly higher than the proof and solids of a genuine sample.

At the time of the investigation, licensee gave a statement to the investigators, wherein he says:

> "I partly refilled this bottle with Three Feathers Whiskey. Some time ago I found myself out of Carstairs Whiskey and it was at night time when I could not get any, although I had it ordered and so as not to tell any customers I did not have Carstairs Whiskey, I poured some Three Feathers Whiskey in this Carstairs bottle.

"I entirely forgot all about it and it has been standing on the bar since then, for when my order came in I opened a fresh bottle of Carstairs."

As to penalty: In Re Smith, Bulletin 482, Item 1, I suspended a license for thirty days where it appeared that three bottles were deliberately refilled by the licensee. The practice of refilling is reprehensible whether it involves one or more bottles. Purchasers are entitled to receive exactly what they order. When an order is placed for Carstairs, we expect it to be served without Feathers -- so also vice versa! Those who order Three Feathers are entitled to it without adulteration.

The licensee, by his frank acknowledgment of the violation, has materially aided the Department in its disposition of this case. I shall suspend the license for twenty days.

Accordingly, it is, on this 27th day of February, 1942,

ORDERED, that Plenary Retail Consumption License C-209, issued to Martin Lenartowicz for premises 914 N. Olden Avenue, Trenton, by the Board of Commissioners of the City of Trenton, be and the same is hereby suspended for a period of twenty (20) days, commencing March 4, 1942, at 2:00 A.M. and terminating March 24, 1942, at 2:00 A. M.

Alfred E. Driscoll
Commissioner.

CHECKED BY No. 3