

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

BULLETIN 458

MAY 12, 1941.

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

BULLETIN 458

MAY 12, 1941.

1. DISCIPLINARY PROCEEDINGS - FRONT FOR NON-LICENSEE - SUSPENSION FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT AFTER 10 DAYS IF SITUATION CORRECTED - 14 DAYS ELAPSED - SITUATION CORRECTED - PETITION TO LIFT GRANTED.

In the Matter of Disciplinary Proceedings against)

NUNZIO RUSSO,
47 West 23rd Street,
Bayonne, N. J.,)

ON PETITION
ORDER

Holder of Plenary Retail Consumption License C-85 issued by the Board of Commissioners of the City of Bayonne.)
-----)

Charles Bressler, Esq., Attorney for Petitioner, Salvatore Basile.

On April 19, 1941 I suspended defendant's license for the balance of its term after finding him guilty of charges that he was a "front" for his father, Michael Russo.

At that time, leave was granted to Michael Russo to file a petition to lift said suspension, with proof that the Board of Commissioners of the City of Bayonne had granted transfer of the license to him. Re Russo, Bulletin 455, Item 9.

On April 23, 1941 Salvatore Basile filed a verified petition herein wherein he set forth that, prior to the date of the aforesaid order, he had entered into a contract with Nunzio Russo to purchase the licensed business and had filed an application with said Board of Commissioners to transfer the license to him. On April 24, 1941 leave was given said Board to consider on its merits said application for transfer.

On the date hereof petitioner has presented to me a certified copy of a resolution of said Board of Commissioners, dated May 6, 1941, granting transfer of the license from Nunzio Russo to Salvatore Basile and directing the City Clerk to so transfer the license when the suspension is lifted by the Acting Commissioner; and

It appearing that leave should be granted to Salvatore Basile, instead of Michael Russo, to apply for the order herein; and

It further appearing that more than ten days have elapsed since suspension became effective,

It is, on this 6th day of May, 1941,

ORDERED, that the suspension heretofore imposed be lifted and that Plenary Retail Consumption License C-85 be and the same is hereby restored to full force and operation, effective immediately.

E. W. GARRETT,
Acting Commissioner.

2. DISCIPLINARY PROCEEDINGS - PURCHASE OF ALCOHOLIC BEVERAGES BY NEW JERSEY RETAILER OTHERWISE THAN FROM A NEW JERSEY MANUFACTURER OR WHOLESALE - IMPORTATION WITHOUT LICENSE OR PERMIT IN EXCESS OF ALLOWABLE QUANTITY AND OTHERWISE THAN FOR PERSONAL CONSUMPTION - POSSESSION OF ALCOHOLIC BEVERAGES ILLICIT BECAUSE UNLAWFULLY TRANSPORTED INTO THE STATE - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary)
Proceedings against)

GUSTAVE SUSSLIN,)
627-629 River Street,)
Paterson, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Con-)
sumption License C-29, issued)
by the Board of Aldermen of)
the City of Paterson.)

Edward G. Weiss, Esq., Attorney for Defendant-Licensee.
Robert R. Hendricks, Esq., Attorney for Department of
Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to charges of (1) purchasing alcoholic beverages from a vendor who was not the holder of a New Jersey manufacturer's or wholesaler's license, in violation of Rule 15 of State Regulations No. 20; (2) transporting in this State in a vehicle under his control and within one consecutive period of twenty-four hours, a case of 12 one-quart bottles of alcoholic beverages which had been imported into the State, in violation of R. S. 33:1-2; and (3) possessing alcoholic beverages which were illicit because unlawfully transported into the State, in violation of R. S. 33:1-50.

The Department file on this matter discloses that on October 23, 1940 the defendant-licensee, while driving out of the Weehawken Electric Ferry exit, was stopped by investigators of this Department and an officer of the Weehawken Police Department. Search of the car revealed, on the back seat, a case containing 12 one-quart bottles of Wilson "That's All" Whiskey. In a statement subsequently given to the investigators, the defendant-licensee admitted that he had purchased the liquor in a New York department store because he "saw a bargain and bought it." He insisted, however, that he had purchased the liquor, not for the purpose of resale in connection with his licensed business, but "to give away to....(his) family around Christmas time for gifts."

Any defense to any of the charges based on such contention must be deemed to have been abandoned by entry of the plea. The defendant-licensee has asked, however, that his assertion regarding his intended personal use of the liquor be treated as a mitigating factor in fixing the penalty. The purchase, by a person licensed to sell alcoholic beverages at retail, of a full case of liquor at one time, is sufficient, in itself, to raise strong inference that such liquor was intended for use in connection with the purchaser's licensed business. The defendant's story of having, in October, invested over twenty dollars in liquor to be stored away and not used until December, and then only as Christmas presents, is not sufficiently convincing to overcome that inference. Cf. Re Seizure Case No. 5888, Bulletin 436, Item 2.

The New York "price war" then in effect afforded New Jersey retailers no excuse for attempting to circumvent the State Regulations which specifically prohibit them from purchasing alcoholic beverages from vendors other than the holders of New Jersey manufacturer's or wholesaler's licenses. Anything less than rigorous enforcement of this requirement would result in the State's loss of revenue and loss of control and supervision of this highly important phase of liquor traffic in the State.

The instant offense appears to be the defendant-licensee's first violation of record. In view of all the circumstances, I shall suspend his license for fifteen days. By the entry of the guilty plea, the Department has been saved the time and expense of proving its case. Five days of the penalty will, therefore, be remitted.

Accordingly, it is, on this 6th day of May, 1941,

ORDERED, that Plenary Retail Consumption License C-29, heretofore issued to Gustave Susslin by the Board of Aldermen of the City of Paterson, be and the same is hereby suspended for a period of ten (10) days, effective May 12, 1941, at 3:00 A.M. (Daylight Saving Time).

E. W. GARRETT,
Acting Commissioner.

- 3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGE BELOW FAIR TRADE MINIMUM - 10 DAYS' SUSPENSION - PERMITTING A MINOR EMPLOYEE TO SELL ALCOHOLIC BEVERAGES - 5 DAYS' SUSPENSION - TOTAL: 15 DAYS, LESS 5 FOR GUILTY PLEA.

DISCIPLINARY PROCEEDINGS - SALE BY MINOR EMPLOYEE HOLDING AN EMPLOYMENT PERMIT - 30 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against
GUS STEIN,
T/a MARKET WINES & LIQUORS,
110 Market Street,
Passaic, N. J.,
Holder of Plenary Retail Consumption License C-124, issued by the Board of Commissioners of the City of Passaic,
and
NORMAN IRWIN STOLER,
456 Paulison Avenue,
Passaic, N. J.,
Holder of Employment Permit No. 6582, issued by the State Commissioner of Alcoholic Beverage Control.

CONCLUSIONS
AND ORDER

Gus Stein
Norman I. Stoler } Pro Se.

Robert R. Hendricks, Esq., Attorney for the Department of Alcoholic Beverage Control.

The defendant-licensee is charged (1) with sale of an alcoholic beverage below the Fair Trade price, in violation of Rule 6 of

State Regulations No. 30, and (2) with permitting a minor employee, who was the holder of an employment permit for a person disqualified by reason of non-age, to sell alcoholic beverages, in violation of Rule 3 of State Regulations No. 11. The defendant-permittee is charged with selling alcoholic beverages contrary to the condition upon which his employment permit was issued. Pleas of guilty have been entered by both the defendant-licensee and the defendant-permittee. Both matters will be treated and disposed of herein.

The Department file in these matters shows that on April 8, 1941 an investigator entered the above licensed premises and purchased a pint bottle of Wilson "That's All" Whiskey for the price of \$1.20. The minimum consumer price at which pint bottles of this product could have been sold, lawfully, at that time, was \$1.33. Bulletin 424. The sale was made by Norman Irwin Stoler, a minor employed on the premises and the holder of an employment permit for a person disqualified by reason of non-age. In a statement voluntarily given to the investigators, Stoler, who is regularly employed as a stock clerk and delivery boy, admitted having made previous sales, stating that he "thought....(the) permit gave me permission to sell alcoholic beverages."

The instant offenses appear to be the defendant-licensee's and the defendant-permittee's first violations of record.

As regards the charge of having sold an alcoholic beverage below the Fair Trade price - the license of the defendant-licensee will be suspended for ten days. Re Sabol, Bulletin 456, Item 8.

As to the charges against both the defendant-licensee and the defendant-permittee arising out of the sale and service of alcoholic beverages by the minor permittee - the license of the defendant-licensee will be suspended for an additional five days and the employment permit of the defendant-permittee for thirty days. Cf. Re Rausse and Re Cresco, Bulletin 452, Item 6; Re Petrone et al. and Re Christiano, Bulletin 451, Item 9.

By entry of the guilty pleas the Department has been saved the time and expense of proving its cases. Five days of the penalties respectively imposed on licensee and permittee will, therefore, be remitted.

Accordingly, it is, on this 6th day of May, 1941,

ORDERED, that Plenary Retail Consumption License C-124, heretofore issued to Gus Stein by the Board of Commissioners of the City of Passaic, be and the same is hereby suspended for a period of ten days, effective May 12, 1941, at 3:00 A.M. (Daylight Saving Time); and it is further

ORDERED, that Employment Permit No. 6582, heretofore issued to Norman Irwin Stoler by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for a period of twenty-five days, effective May 22, 1941, at 3:00 A.M. (Daylight Saving Time).

E. W. GARRETT,
Acting Commissioner.

4. DISCIPLINARY PROCEEDINGS - CONDUCT OF LICENSED BUSINESS, ALLOWING CUSTOMERS ON THE PREMISES, AND FAILING TO REMOVE SCREENS DURING PROHIBITED HOURS - THIRD OFFENSE - LICENSE SUSPENDED FOR BALANCE OF TERM - HEREIN OF THE ADMINISTRATION OF DISCIPLINARY MATTERS IN WEST NEW YORK.

In the Matter of Disciplinary Proceedings against)

JOHN J. REDDAN,)
T/a OLD HOMESTEAD TAVERN,)
5610 Park Avenue,)
West New York, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-79, issued by the Board of Commissioners of the Town of West New York.)
-----)

John J. Reddan, Pro Se.
Abraham Merin, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to charges of (1) conducting his licensed business on April 5, 1941 after 4:00 A.M.; (2) suffering and permitting persons other than himself, his actual employees and agents, in and upon his licensed premises on said date after 4:00 A.M.; and (3) failing to remove all shades, screens and other obstructions so as to permit a clear view of the bar in the licensed premises on the date and during the hours aforesaid, in violation of a resolution adopted by the board of Commissioners of the Town of West New York on December 15, 1935, as amended July 11, 1939.

In the instant case the investigators report that they purchased and consumed alcoholic beverages on the licensed premises until 4:45 A.M. on April 5, 1941. They also state that there were thirty-five customers on the premises, who were ordered to leave when the investigators disclosed their identity. The licensee gave a signed statement admitting the sale and service of alcoholic beverages until 4:45 A.M. on the morning in question.

This is not the licensee's first offense. On September 17, 1938 he was found guilty of conducting the licensed business and permitting customers to remain upon the licensed premises after 3:00 A.M. (the then closing hour) on August 5, 1938. The license then held was suspended for ten days. Re Reddan, Bulletin 269, Item 2. In that case, sales were made for a full hour after the closing time and as many as twenty-five persons were in the premises after hours.

On October 17, 1940 he was again found guilty of the same violations and, in addition, failing to remove all shades, screens and other obstructions so as to permit a clear view of the bar in the licensed premises on September 5, 1940 after 4:00 A.M., in violation of the resolution then in effect. His license was suspended for twenty days. Re Reddan, Bulletin 428, Item 2. Although not recited in the Conclusions, it appears from investigators' reports in that case that the premises were open and sales were made for almost an hour after closing time, and that at least twenty-three customers were in the premises after hours.

In view of the licensee's flagrant and recurrent violations of the closing regulations, it is obvious that he has neither regard nor respect for the law. He has already been penalized twice for identical violations. Apparently he has learned not even a small part of a necessary lesson. Unrepentant and recalcitrant, he has committed the same violations. Every licensee knows how to tell time. Is this man so blind to the privileges of his license that he refuses to see the face of a clock? The violations in this case must be regarded as pertinaciously deliberate. In fairness it should be pointed out, however, that the violations are not aggravated by any other possible derelictions of record.

As to the penalty: It has been the policy of this Department for years to recommend five days on each of the charges involved here as a minimum penalty for first offense; ten days for second offenses; and outright revocation for the third offense. Each adjudicated violation is one strike. Three strikes mean "out."

To revoke the license means that this man loses his license privileges altogether for a period of two years from the effective date of the revocation. R. S. 35:1-31. Nor can he hold or receive the privileges of any other class of license under the Alcoholic Beverage Law during such period.

This license was not issued by me. The Board of Commissioners of the Town of West New York issued a plenary retail consumption license to Reddan, in partnership with another, on July 2, 1934. This partnership was dissolved in 1938 and on July 1, 1938 the license was issued to Reddan as an individual and has been renewed each license year since by the Board. R. S. 33:1-12, 19.

On October 25, 1938 the late Commissioner Burnett, in a letter to the municipal Clerk of West New York, said: "I wrote you on February 28th this year in respect to the nominal one-day suspensions made by the Board.....to the effect that they appeared woefully inadequate, and I asked the question - 'Shall I take it that hereafter your Board prefers that I handle these matters direct?'.... It seems timely, therefore, that I should again write your Board, through you, and inquire if it is their desire that I continue to handle all disciplinary matters affecting West New York licensees. I do not wish to. My preference is that each governing body conduct its own affairs and administer its own discipline."

The Board did not avail itself of its opportunity to handle its own proceedings and to date has continued without an official murmur to permit this Department to supersede it in the conduct of its disciplinary cases involving licensees.

The situation is not of my choice. In the exercise of its sound discretion subject to appeal to the State Commissioner the Board decides who shall be entrusted with the high privilege of a liquor license in its municipality. The Board should know its own much better than the State Commissioner. The Board should know whether this third-time violator deserves to lose his license for two years or whether he should ever be licensed again in West New York.

I shall suspend his license for the balance of the term. The Board in the exercise of its discretion will decide whether Reddan shall have his license privileges returned to him through renewal on July 1, 1941. In the meantime he will have served a substantial penalty for his third violation.

New Jersey is committed to the principle of local autonomy. The ever-active root structure of municipal initiative and independence is vital to the solid trunk of the State. Without it the luxuriant foliage of democracy becomes withered and borne away on the wind of dictatorship. Initiative to do the right thing should be encouraged despite disappointments and mistaken attitudes. This thing should be done the fair American way. That is the essence of democracy. I abhor usurping dictators; I prefer cooperative umpires.

Alexander Pope confided: "Hope springs eternal in the human breast." I trust that the Board of West New York will see the light and declare its willingness to resume its responsibilities.

Accordingly, it is, on this 8th day of May, 1941,

ORDERED, that License C-79, heretofore issued to John J. Reddan, T/a Old Homestead Tavern, by the Board of Commissioners of the Town of West New York, be and the same is hereby suspended for the balance of its term, effective May 12, 1941, at 4:00 A.M. (Daylight Saving Time).

E. W. GARRETT,
Acting Commissioner.

5. ELIGIBILITY - DISORDERLY CONDUCT AND LOITERING - NOT MORAL TURPITUDE - APPLICANT NOT DISQUALIFIED BY SUCH CONVICTIONS.

May 8, 1941

Re: Case No. 377

In 1924 applicant was convicted on a charge of loitering and fined \$10.00; in 1926 he was adjudged a disorderly person and fined \$10.00; a few months later, during the same year, he was again convicted on a charge of loitering and fined \$5.00; in 1927 he was convicted of disorderly conduct and fined \$10.00; in 1928 he was once again convicted of loitering and given a suspended sentence. His fingerprint record further discloses that he was arrested in 1924 and in 1929 on charges of assault and battery, and atrocious assault and battery, respectively, and again in 1931, in Philadelphia, on a charge of being a suspicious person. It does not appear, however, that he was convicted as a result of any of these arrests.

Convictions arising out of charges of disorderly conduct and loitering are not convictions of crimes. Re Case No. 347, Bulletin 451, Item 9; Re Case No. 342, Bulletin 423, Item 11; Re Case No. 329, Bulletin 412, Item 9. Arrests which result in dismissals are not convictions. Re Case No. 347, supra; Re Case No. 68, Bulletin 364, Item 3.

Examination into the circumstances surrounding each arrest and conviction discloses nothing serious or morally reprehensible in connection with any one of said arrests or convictions. While the very length of applicant's criminal record would seem to indicate a propensity for running afoul of the law, such inference is somewhat tempered by the fact that all of the convictions occurred while applicant was between fifteen and nineteen years of age.

Since applicant has never been convicted of a crime within the meaning of K. S. 33:1-25, 26, he is not disqualified by statute.

neighborhood and the proximity of the three licensed establishments on the same highway, it would appear that respondent's refusal to add a fourth license there is clearly reasonable and in nowise an abuse of such discretion.

Appellants' contention that because of the considerable vehicular traffic traversing Route 25, the issuance of a license to them is essential for the needs of transient trade, is without merit. The existence of three taverns within a compass of three and a half miles seems amply sufficient even for such a principal thoroughfare as the one in question. Cf. Walsh v. Egg Harbor, Bulletin 146, Item 7; Levitt v. Liberty, Bulletin 169, Item 4; Bialoglow v. Independence, Bulletin 254, Item 7; Skeba v. Millstone, Bulletin 274, Item 1; Granda v. Rockaway, Bulletin 282, Item 7; Watts v. Princeton, Bulletin 301, Item 2.

Appellants also apparently contend that they should have been given a hearing before the local Committee. There is no such requirement. Such hearing is necessary only to afford objectors an opportunity to be heard. A local issuing authority need not conduct any hearing when denying a license. See Rule 8 of State Regulations No. 2; Gomulka v. Linden, Bulletin 294, Item 8; Sidney's, Inc. et al. v. Newark, Bulletin 296, Item 10; Lipman v. Newark, Bulletin 356, Item 6.

The action of respondent is affirmed.

Accordingly, it is, on this 8th day of May, 1941,

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

E. W. GARRETT,
Acting Commissioner.

7. DISCIPLINARY PROCEEDINGS - CONDUCT OF OTHER MERCANTILE BUSINESS ON PREMISES FOR WHICH PLENARY RETAIL CONSUMPTION LICENSE HAS BEEN ISSUED - DELIBERATE DELAY IN COMPLYING WITH THE LAW DESPITE REPEATED REQUESTS BY THE DEPARTMENT - SUSPENSION FOR BALANCE OF TERM, WITH LEAVE TO PETITION TO LIFT AFTER 30 DAYS IF SITUATION CORRECTED.

In the Matter of Disciplinary)
Proceedings against)
Helen Schey,)
288 Madison Ave.,)
Perth Amboy, N. J.,)
Holder of Plenary Retail Consump-)
tion License C-105 issued by the)
Board of Commissioners of the)
City of Perth Amboy.)
- - - - -)

CONCLUSIONS
AND ORDER

Helen Schey, by Isidor Schey, Manager.
Richard E. Silberman, Esq., Attorney for the Department of
Alcoholic Beverage Control.

The licensee pleaded guilty to charges that on February 7, 1941, and on divers days prior thereto, in her premises licensed under a plenary retail consumption license, she sold delicatessen for off-premises consumption in violation of special rulings made by the

Acting State Commissioner of Alcoholic Beverage Control in letters addressed to her dated December 20, 1940 and January 17, 1941.

R. S. 53:1-12, pursuant to which the defendant's license was issued, provides, among other things, that "...this license shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which a.....delicatessen....or other mercantile business....is carried on."

The defendant-licensee has had notice of this requirement for some time.

Pioneer Delicatessen, Inc. held a plenary retail consumption license for the above premises from December 12, 1935 to June 30, 1937, inclusive. Helen Schey, the present licensee, was Secretary and Treasurer of this corporation, and Isidor Schey, Manager of the present licensed premises, was President of the corporation. Both Scheys were actively in charge of the business and the premises. In 1935, 1936, and again in 1937, investigations were conducted by the Department of the corporation's delicatessen business. On October 13, 1937 and on December 6, 1937, Isidor Schey admitted violations.

On July 1, 1938 a plenary retail consumption license at the above premises was issued to the defendant-licensee. From that time until the present time she has conducted a combination restaurant-delicatessen in conjunction with the sale of alcoholic beverages for on-premises consumption. The business conducted is similar to those described in Sidney's, Inc. v. Newark, Bulletin 296, Item 10.

Inspection of the licensed premises on October 13, 1938 disclosed that delicatessen was being sold for off-premises consumption.

Inspection during 1939 and 1940 disclosed no changes in the premises.

On October 22, 1940 delicatessen and groceries were again sold for off-premises consumption.

Although the licensee had been conducting a delicatessen business in conjunction with her liquor business ever since the original issuance of her license, she had secured annual renewals of her license. Since the municipal issuing authority had presumably inspected the licensed premises prior to the issuance of the license each year and had thought the premises were suitable for a license, no proceedings were instituted for this violation.

Instead, on December 20, 1940, by letter, the Acting State Commissioner directed the licensee's attention to the provisions of the statute (R. S. 53:1-12) and specifically instructed the licensee to stop all grocery or delicatessen business forthwith. This ruling contained the clear and unambiguous statement that the licensee might have

"....food on display.....for on-premises consumption in conjunction with your restaurant business, but the sale of grocery or delicatessen items to be taken out for consumption off your premises must stop at once. And by this I mean all sales, whether large or small and whether often or merely casual. The grocery business is to be stopped completely."

Despite this warning, delicatessen was sold on January 3, 1941 to investigators of this Department for off-premises consumption.

Finally, on January 17, 1941, the Acting State Commissioner addressed a letter to the licensee reviewing the facts, and concluding:

"I give you fair warning, however, that no further excuse will be accepted. For the next violation, whether large or small, it will be disciplinary proceedings...."

Upon receipt of this letter, the licensee's manager, Isidor Schey, appeared at this Department apparently for the purpose of working out satisfactory alterations excluding the delicatessen business from the licensed premises. On February 7, 1941 investigators were dispatched to check up on the alterations. They found that none had been made and again were sold delicatessen for off-premises consumption.

On February 10, 1941 the manager for the licensee again appeared at this office and, without mention of the violation which had just been discovered, again requested approval of a specific plan of alterations. On February 13, 1941, while not condoning the violations found, a letter was addressed to the licensee containing a sketch of the licensed premises with complete instructions for making specific alterations which would satisfy the statutory requirement of a separation of the delicatessen business from the liquor business, and advising the licensee to petition the local issuing authority to reduce the licensed premises as in Re Daly, Bulletin 171, Item 3.

On March 31, 1941, when these charges were preferred, the licensee apparently had not made the requested alterations.

The licensee has had every opportunity to effect compliance with the statute. The licensed premises has been operated apparently in violation of the statute ever since the matter first came to the attention of the Department in 1935. Too much is enough!

Accordingly, the license will be suspended for the balance of its term, giving the licensee further opportunity to make the alterations which should have been made long since.

When the alterations have been completed, and approved by this Department, I shall entertain a petition to lift the suspension herein imposed. Considering all the facts, however, I conclude that the licensee's course of conduct was not motivated by good faith but was carefully calculated to postpone compliance and thereby carry on through subterfuge an unlawful business. In view of this apparently deliberate delay and the contumacious failure to comply with the specific rulings of this Department, the suspension will not be lifted until at least thirty days shall have been fully served.

Accordingly, it is, on this 8th day of May, 1941,

ORDERED, that Plenary Retail Consumption License C-105, heretofore issued to Helen Schey by the Board of Commissioners of the City of Perth Amboy, be and the same is hereby suspended for the balance of its term, effective May 12, 1941, at 7:00 A.M. (Eastern Standard Time); and it is further

ORDERED, that the said suspension shall be lifted if it satisfactorily appears, on petition and proper corroborative Department investigation, that the situation herein has been fully corrected, provided, however, that in no event shall such suspension be lifted prior to the expiration of thirty (30) days from the effective date hereof.

E. W. GARRETT,
Acting Commissioner.

8. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENT IN APPLICATION FOR LICENSE - AIDING AND ABETTING A NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - CHARGES DISMISSED - SALES TO MINORS - 15 DAYS' SUSPENSION - EMPLOYING A DISQUALIFIED PERSON - 5 DAYS' SUSPENSION - TOTAL: 20 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against CHARLES RUBIN, T/a CLOVER COUNTRY CLUB, 19 Church Street Sussex Borough, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-5 for the fiscal year 1939-40 and Plenary Retail Consumption License C-5 for the fiscal year 1940-41, issued by the Borough Council of the Borough of Sussex.

Daniel G. Kasen, Esq., Attorney for Licensee. Samuel B. Helfand, Esq., Attorney for Department of Alcoholic Beverage Control.

Charges served upon the licensee allege, in substance, that:

(1) In his application dated September 2, 1939, for transfer of license C-5, he falsely stated that no individual had any interest directly or indirectly in the license applied for or in the business to be conducted thereunder, whereas Joseph Snyder and Isador Machlis had such an interest;

(2) Since September 18, 1939 he knowingly aided and abetted Joseph Snyder and Isador Machlis, non-licensees, to exercise the rights and privileges of his license;

(3) On February 18, 1940 he sold alcoholic beverages to three minors in violation of R. S. 33:1-77;

(4) On February 18, 1940 he sold alcoholic beverages to the said three minors in violation of Rule 1 of State Regulations No. 20;

(5) On March 20, 1940 and on divers days prior thereto, he knowingly employed Joseph Snyder, a person who would fail to qualify as a licensee by reason of non-residence, in violation of Rule 1 of State Regulations No. 11.

Licensee pleaded not guilty as to Charges (1) and (2), and guilty as to Charges (3), (4) and (5).

As to Charges (1) and (2): In application dated September 2, 1939, licensee stated that no other individual had any interest in the license applied for or in the business to be conducted thereunder. Licensee is apparently fully qualified, but Joseph Snyder is disqualified because he has not resided in New Jersey for five years and Isador Machlis is disqualified because he is a non-resident.

The licensed premises consist of a five acre tract of land, on which is erected a two and one-half story hotel and a one and one-half story recreation hall. The Department's case is based upon statements given by the licensee to investigators of this Department on February 18, 1940 and March 20, 1940, and upon a statement given by Joseph Snyder to the investigators on March 20, 1940. In the licensee's statements he sets forth that he invested in the property \$2,000.00 cash; that Joseph Snyder invested \$1,000.00; that he (the licensee) borrowed about \$1,600.00 from Isador Machlis; that he, Machlis and Snyder have equal shares in the building and property. In Joseph Snyder's statement he sets forth that he invested about \$800.00 cash, and that he has a one-third interest in the "tavern, hotel and everything."

The testimony given at the hearing shows that the property was purchased in September 1939 by Charles Rubin and Isador Machlis from William Maurer and Emma Maurer, his wife; that three days after the purchase of the property, Rubin and Machlis conveyed a one-third interest in the property to Joseph Snyder, who is a son of Machlis' sister. Thus, it appears that Charles Rubin, Isador Machlis and Joseph Snyder are each the owner of a one-third interest in the real estate. The testimony further shows that at the time of purchase, Rubin contributed \$500.00 and Machlis contributed \$1500.00, making up the cash payment, and that they executed a mortgage for the balance of the purchase price. There seems to have been no money consideration for the deed to Snyder.

The question in this proceeding, however, does not concern the title to the real estate but, rather, the ownership of the license and the business conducted thereunder. Licensee testified that, in addition to his investment of \$500.00 in the real estate, he borrowed the sum of \$600.00, out of which he paid the transfer fee, purchased some equipment used on the licensed premises, and used \$200.00 thereof to open a bank account in his own name, in which account all receipts from the licensed business have been deposited and from which account all bills have been paid.

He further testified that no other person has received or has any right to receive any of the profits; that he operates the business but employs Mrs. Snyder, who receives no specified salary and formerly employed her son, Joseph Snyder. Machlis, Mrs. Snyder and Joseph Snyder testified that they have no interest in the profits of the business and that all such profits belong to the licensee. Machlis further testified that he invested \$1500.00 in the purchase of the real estate in order to provide a home for his sister and her children. Despite Joseph Snyder's statement as to his investment of \$800.00, I am satisfied that he contributed nothing because he was then a student at college and apparently had no money.

Weighing all the testimony, I am satisfied that the license and the business conducted thereunder were and now are the sole property of the licensee, Charles Rubin, and that Joseph Snyder and Isador Machlis, despite their interest in the real property, have never exercised any rights and privileges under the license. The record owners of the real estate, since the hearing, have leased the property for a term of five years to Charles Rubin.

For the reasons aforesaid, Charges (1) and (2) are dismissed.

As to Charges (3) and (4): On February 17, 1940 licensee sold a bottle of wine to Arthur _____, age 18, and glasses of beer to Jerald _____, age 19, and Pearl _____, age 18. In a letter

written to this Department, licensee alleges that the first minor produced a driver's license showing him to be twenty-one years of age; that the sale to the second minor was made in the rush of business, and that he has no knowledge as to the sale to the girl. No proof was produced as to the driver's license. I find no mitigating circumstances, and hence the license will be suspended for fifteen days on Charges (3) and (4).

As to Charge (5): Licensee admits by his plea that Joseph Snyder was employed on the licensed premises, although he had not resided in New Jersey for five years and had obtained no permit from this Department. I shall suspend the license for five days on Charge (5).

The penalty of twenty days' suspension will be reduced by five days because of the guilty pleas entered herein.

Accordingly, it is, on this 9th day of May, 1941,

ORDERED, that License C-5 for the present fiscal year, issued to Charles Rubin by Borough Council of the Borough of Sussex, be and the same is hereby suspended for a period of fifteen (15) days, effective May 14, 1941, at 6:00 A.M. (Eastern Standard Time).

E. W. GARRETT,
Acting Commissioner.

9. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENT IN APPLICATION FOR LICENSE - AIDING AND ABETTING A NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - SITUATION CORRECTED - 20 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

CLUB ARABY,)
718 Middle Road,)
Hammonton, N. J.,)

CONCLUSIONS AND ORDER

Holder of Club License CB-3, issued by the Town Council of the Town of Hammonton.)
- - - - -)

Charles Basile, Esq., Attorney for Department of Alcoholic Beverage Control.

Licensee pleaded guilty to the following charges:

"1. In your application for license dated June 30, 1939, filed with the Town Council of the Town of Hammonton, upon which Club License CB-4 for the year 1939-40 was granted, you failed to answer Question 16a therein, which asks: 'Will the privilege of selling alcoholic beverages on the licensed premises be sold, rented, concessioned or given to any one other than the club?', thereby suppressing the fact that Paul Amato had been given the privilege of selling alcoholic beverages, said suppression of fact being in violation of R. S. 33:1-25.

"2. In your application for license dated June 7, 1940, filed with the Town Council of the Town of Hammonton, upon which Club License CB-3 for the year 1940-41 was 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 fact Paul Amato had such an interest; said false statement being in violation of R.S.33:1-25.

"3. Since on or about July 1, 1939 and until the present time, you knowingly aided and abetted Paul Amato, a non-licensee, to exercise the rights and privileges of your licenses contrary to R. S. 33:1-26, in violation of R. S. 33:1-52."

The only question, therefore, concerns the penalty to be imposed.

In a statement given to investigators of this Department on July 25, 1940, Paul Amato, Treasurer of the club, admitted that he paid for the license; that he purchased all alcoholic beverages, and that in return he was to receive all moneys "realized from the bar." At the hearing herein he testified that he had made no personal profit from the operation of the licensed business; that as Treasurer of the club he kept the small profits derived from the bar separate from the other funds of the club and used said profits periodically to purchase refreshments for the members.

The Treasurer, as well as the President and the Secretary of the club, testified at the hearing herein that after institution of these proceedings the method of operation was changed so that thereafter all proceeds from the sale of liquor would be received by and all bills for liquor paid by the club and that proper records would be kept in books prepared for that purpose. Their testimony is corroborated by a resolution adopted by the club on September 26, 1940.

Club licenses have been revoked where it appeared that the licensed business was, in fact, operated for the profit of individuals and that the club was used as a mere "front" to cover the operation by an individual. Re Business Men's Associates, Inc., Bulletin 348, Item 6; Re Polish-American Citizens Club, Inc., Bulletin 419, Item 3; Re North Italian American Club, Inc., Bulletin 453, Item 11. Here, however, it does not appear that Paul Amato received any personal profit; the club appears to be a bona fide organization, with forty-four members in good standing; the club has frankly admitted its guilt and has corrected the situation which formerly existed. Since I find that the club did not grant its liquor concession to Amato as a commercial enterprise, I shall impose the same penalty fixed in Re Laurence Brook Country Club, Inc., Bulletin 335, Item 6, and suspend the license for twenty days.

Accordingly, it is, on this 9th day of May, 1941,

ORDERED, that Club License CB-5, heretofore issued to Club Araby by the Town Council of the Town of Hammonton for premises at 718 Middle Road, Hammonton, be and the same is hereby suspended for a period of twenty (20) days, effective May 14, 1941, at 2:00 A.M. (Daylight Saving Time).

E. W. Barrett

Acting Commissioner.

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