

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

BULLETIN 792

FEBRUARY 3, 1948.

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS (Paterson) - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
2. DISCIPLINARY PROCEEDINGS (Bound Brook) - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
3. APPELLATE DECISIONS - TOWN HOUSE INC. v. MONTCLAIR.
4. APPELLATE DECISIONS - TOWN HOUSE INC. v. MONTCLAIR - ORDER STAYED PENDING APPLICATION FOR WRIT OF CERTIORARI.
5. APPELLATE DECISIONS - TURF CLUB BAR INC. v. ASBURY PARK.
6. DISCIPLINARY PROCEEDINGS (Newark) - FALSE STATEMENT IN APPLICATION - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF LICENSE - LICENSE SUSPENDED FOR BALANCE OF TERM, WITH LEAVE TO APPLY TO LIFT SUSPENSION AFTER 35 DAYS, IF ILLEGAL SITUATION CORRECTED.
7. DISQUALIFICATION - PREVIOUS PETITION DENIED - APPLICATION HEREIN GRANTED.
8. FAIR TRADE - NOTICE OF COMPLETE PUBLICATION.
9. DISCIPLINARY PROCEEDINGS (Ventnor City) - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM, IN VIOLATION OF RULE 6 OF STATE REGULATIONS NO. 30 - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
10. IMPORTANT INTERPRETATION AND RULING ON RULE 4(a) OF STATE REGULATIONS NO. 34.
11. DISCIPLINARY PROCEEDINGS (Lawnside) - CLUB LICENSE - FRONT FOR INDIVIDUAL - CLUB NOT IN ACTIVE OPERATION FOR THREE YEARS - FALSE STATEMENTS IN APPLICATION - SALES DURING PROHIBITED HOURS - PRIOR RECORD - RULE TO SHOW CAUSE DISMISSED - LICENSE REVOKED.
12. APPELLATE DECISIONS - HYLAND v. KEANSBURG, SHEEHAN AND ANDREACH.
13. STATE LICENSES/ - NEW APPLICATIONS FILED.
14. DISCIPLINARY PROCEEDINGS (Newark) - ILLICIT LIQUOR - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

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

BULLETIN 792

FEBRUARY 3, 1948.

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

In the Matter of Disciplinary Proceedings against)

VIRGINIA M. CORIANI)
347-49-51 West Broadway)
Paterson 2, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-72 issued by the Board of Alcoholic Beverage Control of the City of Paterson.)
-----)

Virginia M. Coriani, Defendant-licensee, Pro Se.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to a charge alleging that on November 21, 1947 she possessed on her licensed premises an illicit alcoholic beverage, to wit, one 4/5 quart bottle labeled "Schenley Reserve Blended Whiskey", in violation of R. S. 33:1-50.

On November 21, 1947, an ABC agent tested twenty-three opened bottles upon defendant's premises and seized the bottle mentioned in the charge when it appeared from his preliminary tests that the contents thereof were not genuine as labeled. Subsequent analysis by the Department chemist disclosed that the characteristics of the whiskey in the seized bottle varied in many respects from the characteristics of a genuine sample of the same product.

Defendant states that she did not tamper with the contents of the seized bottle and alleges that the violation may have been caused by the act of a temporary employee or one of several workmen recently employed to repair her premises. Nevertheless, licensees are responsible for any "refills" found in their stock of liquor. Bulletin 517, Item 2.

Defendant has no prior adjudicated record. Under the circumstances I shall suspend defendant's license for a period of fifteen days, less five for the plea, leaving a net suspension of ten days. See Bulletin 680, Item 1; Bulletin 741, Item 8.

Accordingly, it is, on this 13th day of January, 1948,

ORDERED that Plenary Retail Consumption License C-72, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Virginia M. Coriani, for premises 347-49-51 West Broadway, Paterson, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. January 19, 1948, and terminating at 3:00 a.m. January 29, 1948.

ERWIN B. HOCK
Commissioner.

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

In the Matter of Disciplinary Proceedings against -)

BRASS RAIL, INC.)
108 Talmage Avenue)
Bound Brook, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-2, issued by the Borough Council of the Borough of Bound Brook.)
-----)

Leo J. Berg, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

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

On November 24, 1947, an inspector of the State Department of Alcoholic Beverage Control, during the course of an inspection of the licensed premises, seized one 4/5 quart bottle labeled "Four Roses A Blend of Straight Whiskies", when his field test indicated that the contents of said bottle were not genuine as labeled. Subsequent analysis by the Department chemist confirmed this finding.

The gravamen of the charge herein is "possession". Defendant's lack of knowledge is not material. Cedar Restaurant & Cafe Co. v. Hock, 135 N.J.L. 156.

This is defendant's first adjudicated offense. I shall, therefore, suspend its license for the minimum period of fifteen days, Bulletin 680, Item 1, and remit five days because of the plea, Bulletin 741, Item 8, leaving a net suspension of ten days.

Accordingly, it is, on this 14th day of January, 1948,

ORDERED that Plenary Retail Consumption License C-2, issued by the Borough Council of the Borough of Bound Brook to Brass Rail, Inc., for premises 108 Talmage Avenue, Bound Brook, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. January 20, 1948, and terminating at 2:00 a.m. January 30, 1948.

ERWIN B. HOCK
Commissioner.

3. APPELLATE DECISIONS - TOWN HOUSE INC. v. MONTCLAIR.

TOWN HOUSE, INC.,)	
Appellant,)	
-vs-)	ON APPEAL
BOARD OF COMMISSIONERS OF THE)	CONCLUSIONS AND ORDER
TOWN OF MONTCLAIR,)	
Respondent)	

 Samuel Rosenblatt, Esq. and Daniel Kasen, Esq., Attorneys for Appellant.
 Samuel Allcorn, Jr., Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from a twenty-day suspension imposed against the appellant's plenary retail consumption license by the respondent in disciplinary proceedings charging the appellant with a violation of the local curfew ordinance. The suspension was stayed pending the appeal.

Sales of alcoholic beverages are prohibited in the Town of Montclair, on days other than Sunday, between the hours of 2:00 a.m. and 8:00 a.m. The ordinance in question, which the appellant was charged with violating, provides that: "During the hours that sales are prohibited....., the entire licensed premises shall also be closed...."

On behalf of the respondent, a local police officer testified that on Saturday, July 26, 1947, at 3:35 a.m., or one hour and thirty-five minutes past the closing hour fixed in the aforesaid ordinance, while patrolling his regular post, he arrived at the corner of Bloomfield Avenue and Valley Road where the appellant's premises are located. His attention was attracted to the premises when he heard singing emanating therefrom and, with the aid of his flashlight, observed two men and two women seated at the bar with their backs to him. They "turned and looked at the light" and then one of the men "got up from the bar and came to the door". This man, identified as vice-president of the corporate licensee, a director and stockholder therein and also as one of its bartenders, opened the door and said that he "had a couple of gals in there". The policeman ordered this man "to get the people out of there" and the latter "said he would". The policeman then proceeded with his patrol, keeping the doors of the appellant's premises under observation, and about five minutes later saw the unidentified man and two women leave the premises, enter an automobile and drive away. He further testified that he had never seen any of these three persons at the premises before and that they were not employees of the appellant.

No other witnesses testified for the respondent, and the appellant presented no testimony whatsoever.

Do the circumstances outlined herein constitute a violation of the closing-of-premises ordinance?

In construing a similar ordinance, the Commissioner has held (Bulletin 574, Item 7) that it "means that all members of the public must be excluded (see Re Heisel, Bulletin 318, Item 12). Furthermore, for excluding members of the public, closing or locking the doors is not enough -- patrons must be off the premises. (See Re Casarico, Bulletin 268, Item 1.) In Re Zenda, Bulletin 271, Item 5, the Commissioner ruled that proof of the charge of 'keeping open' (which is the same as 'not being closed') requires only proof that the licensee continues to entertain the public."

This interpretation is the settled law of this state. In Richards v. Bayonne, 61 N.J.L. 496, the Supreme Court was concerned with a penal ordinance providing that: "No person....licensed to keep a....saloon....shall keep open....saloon on.....Sunday....." In upholding the conviction and fine of the licensee, it was said (p. 497):

"To 'keep open', as applied to places of business and to public houses, is a familiar expression, constantly in use. Its meaning in the present case is clear, viz., that the proprietors of public houses shall temporarily cease to entertain the public. It does not refer to the closing of shutters or to the barring of doors. These may be done in order that the place may 'keep open'. It is not met by the mere refusal to sell intoxicating liquors. It means more. As 'to keep open' is a standing invitation that gives to the public a right of access and of entertainment, so 'not to keep open' means that this invitation is withdrawn and that all public entertainment has ceased."

To "entertain", in the sense used, means to "receive"; "to treat" or "deal with". See Webster's New Int. Dict. Under this definition, the mere presence of members of the public on licensed premises during prohibited hours constitutes, prima facie, a violation of the local ordinance. The objective of such regulation is to implement the effective enforcement of the ban of sales of liquor during prohibited hours and to eliminate any possible subterfuges or opportunities for violation of the inhibition. The ordinance, of course, must receive a reasonable interpretation. Circumstances may exist in a given case where, because of a suddenly arising emergent situation, it would be unreasonable to fasten responsibility on a licensee therefor. In the instant case, however, a clear violation of the ordinance is disclosed for which the appellant is strictly accountable.

It may be pointed out that the construction herein employs a more liberal formula for determining whether a violation exists than does that of many other jurisdictions. See, for example, the case of State v. Donovan (S.D.), 132 N.W. 698, annotated in 36 L.R.A. (N.S.) 166, where it is held, in a criminal prosecution, that the prohibition against keeping open operates to exclude from the licensed premises not only members of the general public but as well the licensee and his employees. The court holds that the prohibition "imposes upon the keeper of a saloon the affirmative duty of keeping it closed. The mere failure to perform this legal duty constitutes a crime. State v. Grant, 20 S.D. 164, 105 N.W. 97, 11 A. & E. Ann. Cas. 1017. 'The offense consists in not keeping the saloon closed on Sunday, and it is not material whether or not any sale was made on that day, or as to the intent of the saloon keeper in not keeping it closed; nor is it material as to whether or not any person was seen to enter or depart from the saloon.' State v. Schell, 22 S.D. 340, 117 N.W. 505. The object of the statute is to prevent any transaction connected with the business, in the room wherein the business is located, during the prohibited periods. The ease with which such a law may be evaded and its object defeated has inclined the courts to look with disfavor upon any excuse for the presence of the proprietor or other persons in the place at times when the business may not be lawfully conducted."

The appellant contends that to construe the ordinance to exclude all members of the public is tantamount to a "prohibition" rather than a "regulation". See R. S. 33:1-40. A similar argument was dismissed in Richards v. Bayonne, supra, where the court said that such a regulation imposes only a partial restriction and does not amount to a total prohibition. Cf. Staates v. Washington, 44 N.J.L. 605; Paul v. Gloucester, 50 N.J.L. 585; Thorne v. Kearny, 100 N.J.L. 228.

The appellant is guilty as charged and the twenty-day suspension will be reimposed.

Accordingly, it is, on this 16th day of January, 1948,

ORDERED that Plenary Retail Consumption License C-7, issued by the Board of Commissioners of the Town of Montclair to Town House, Inc., for premises 636 Bloomfield Avenue, Montclair, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. January 21, 1948, and terminating at 2:00 a.m. February 10, 1948.

ERWIN B. HOCK
Commissioner.

4. APPELLATE DECISIONS - TOWN HOUSE, INC. v. MONTCLAIR - ORDER STAYED PENDING APPLICATION FOR WRIT OF CERTIORARI.

TOWN HOUSE, INC.,)
)
 Appellant,)
)
 -vs-)
)
 BOARD OF COMMISSIONERS OF THE)
 TOWN OF MONTCLAIR,)
)
 Respondent)

ON APPEAL
O R D E R

BY THE COMMISSIONER:

It appearing that by Conclusions and Order herein, dated January 16, 1948, the action of respondent in suspending appellant's plenary retail consumption license for a period of twenty days was affirmed, and it was ordered that said license, for premises 636 Bloomfield Avenue, Montclair, be suspended for a period of twenty days, commencing at 2:00 a.m. January 21, 1948 and terminating at 2:00 a.m. February 10, 1948, and

It further appearing that appellant has declared its intention to apply to a Justice of the Supreme Court for a writ of certiorari to review the said Conclusions and Order and to prosecute the writ, if granted, with due diligence, and

It further appearing to my satisfaction that appellant would suffer serious injury if a stay is not granted pending application to a Justice of the Supreme Court for said writ;

It is, on this 19th day of January, 1948,

ORDERED that the effect of the order dated January 16, 1948 be and the same is hereby stayed until a further order is entered herein; on condition, however, that application for a writ of certiorari shall be made to a Justice of the Supreme Court on or before February 11, 1948, and thereafter prosecuted with diligence.

ERWIN B. HOCK
Commissioner.

5. APPELLATE DECISIONS - TURF CLUB BAR INC. v. ASBURY PARK.

TURF CLUB BAR, INC.,)
)
 Appellant,)
)
 -vs-)
)
 MAYOR AND COUNCIL OF THE)
 CITY OF ASBURY PARK,)
)
 Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

 Stout and O'Hagan, Esqs., by Richard R. Stout, Esq. and Philip
 Newman, Esq., Attorneys for Appellant.
 E. Alexander Edelstein, Esq., Attorney for Respondent.
 Herbert H. Tate, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

This is an appeal from respondent's denial of appellant's application for transfer of a plenary retail consumption license held by John W. Moore for premises at 1125 Springwood Avenue, Asbury Park.

Respondent's resolution, adopted on December 2, 1947 by a three-to-two vote, makes no mention of the grounds for the denial. The attorney for the respondent, however, intimated at the hearing herein that "the grounds were the same as for the denial" on March 29, 1947 of a previous transfer application by the appellant involving the same premises.

The prior denial was also appealed to the Commissioner who, on June 26, 1947, sustained the respondent's action. See Turf Club Bar, Inc. v. Asbury Park, Bulletin 770, Item 1. In that case it was determined that the only ground for which any support was found in the evidence was that Sol Konvitz, one of the appellant's stockholders, "would operate these premises in the same objectionable manner" as he does as manager of another tavern, known as the Hampton Inn, located in Neptune Township, a municipality adjoining Asbury Park. It was there decided that the appellant had failed to sustain the burden of proving that respondent's action was unwarranted and the appeal was, therefore, dismissed.

The proof of the "objectionable manner" of operation of the Hampton Inn came from the Chief of Police of Neptune Township, who testified that "there was some cutting there last Fall", the inference being, in the absence of any contradictory testimony, that the "cutting" was attributable to some delinquency on the part of the management of the Hampton Inn.

In the instant case the same incident was the subject of a more intensive and exhaustive examination. It now clearly appears, from the testimony of the same Chief of Police, that the "cutting" took place at least "150 to 200 feet away from the Hampton Inn" and that there was no connection between the "cutting" and the management of the Hampton Inn. He further testified that the reputation of the Inn was "good; the same as any other saloon", and that no violations or complaints concerning its operation had ever come to his attention.

It is apparent that, if this testimony had been available to the Commissioner in the prior case, a different result would have been reached. That case, at best, presented a very close issue. The cited testimony herein, however, convinces me that the appellant has now demonstrated that respondent's action was not justified and that its anticipated fears that Sol Konvitz "would operate these premises" in an "objectionable manner" are lacking in substance.

One further issue requires some discussion. At the instant hearing, several witnesses testified concerning the "general undesirability" of the premises covered by the appellant's application. Much of this testimony is vague and indefinite and unsupported by any probative evidence. Particular stress is attempted to be laid upon the number of persons who loiter on the corner near the licensed premises. The proofs, however, indicate that these loiterers are frequenters of a nearby poolroom and not of the licensed premises. In this connection it is highly significant that, despite their alleged protests, none of these witnesses objected to the renewal of the license for the current licensing year.

On the other hand, the records indicate that these premises have been licensed for the past ten years without ever having been involved in any violation of the liquor laws, and the present licensee has been operating there for more than seven years. In addition, it affirmatively appears from the testimony of the local licensing inspector that there is "not a thing wrong" with the conduct of the premises in question.

As I recently said in Leonia Liquors, Inc. v. Leonia, Bulletin 766, Item 1:

"The transfer of a liquor license to other persons or premises, or both, is not an inherent or automatic right. The issuing authority may grant or deny the transfer in the exercise of reasonable discretion. If denied on a reasonable ground, such action will be affirmed. Fafalak v. Bayonne, Bulletin 95, Item 5; VanSchoick v. Howell, Bulletin 120, Item 6; Craig v. Orange, Bulletin 251, Item 4; Masarik v. Milltown, Bulletin 283, Item 10.

"On the other hand, where it appears that refusal of a transfer is arbitrary and unreasonable, the action of respondent in refusing the transfer will be reversed. Blumenthal v. Wall, Bulletin 169, Item 6; Conn v. Kearny, Bulletin 173, Item 1; Miller v. Paterson, Bulletin 219, Item 6; Rucereto v. Dumont, Bulletin 253, Item 6; Shapley v. Delaware, Bulletin 294, Item 7."

In view of the present record, I have no alternative other than to reverse the respondent's action.

Accordingly, it is, on this 20th day of January, 1948,

ORDERED that the action of the respondent in denying appellant's application for transfer of the plenary retail consumption license held by John W. Moore for premises 1125 Springwood Avenue, Asbury Park, be and the same is hereby reversed, and respondent is directed to issue forthwith the transfer for which application was made by appellant.

ERWIN B. HOCK
Commissioner.

6. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN APPLICATION - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF LICENSE - LICENSE SUSPENDED FOR BALANCE OF TERM, WITH LEAVE TO APPLY TO LIFT SUSPENSION AFTER 35 DAYS, IF ILLEGAL SITUATION CORRECTED.

In the Matter of Disciplinary Proceedings against)

MILDRED SANTASIERO)
T/a CLUB 88)
88 - 14th Avenue)
Newark 3, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-906 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
-----)

Sam A. Colarusso, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esc., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to charges alleging that (1) she falsified her current license application by concealing the fact that Alfred J. Santasiero had an interest in the license applied for and the business conducted thereunder, in violation of R. S. 33:1-25, and (2) she permitted Alfred J. Santasiero to exercise the rights and privileges of her license from June 30, 1941 until the present time, in violation of R. S. 33:1-52.

In the statements signed by both the licensee and her husband, Alfred J. Santasiero, they readily admitted that, since the business was purchased in 1941, Alfred J. Santasiero has been one of the real owners of the liquor establishment. They allege that the license had been taken out in the name of defendant because Alfred J. Santasiero had judgments at law outstanding against him.

Although not admitted by defendant and her husband, the true reason for failure to disclose the interest of Alfred J. Santasiero in the license may have been in fact that in 1939 he had been placed on probation and fined \$150.00 as a result of being convicted as the holder of a sum of money bet on a horse race. The question involved is whether or not this single conviction of crime involved moral turpitude.

Commercialized gambling may or may not involve moral turpitude. In Case No. 239, Bulletin 305, Item 9, it was held that the conviction of the head of a ring conducting gambling establishments, where the activities of the ring were attended by methods of violence, did involve moral turpitude. In Case No. 288, Bulletin 337, Item 14, the conviction of a "lieutenant" of the real operator of a lottery conducted on a large scale, it was held, did involve moral turpitude. So also in a case wherein it was held multiple convictions showed a reckless disregard for law warranting the conclusion that the last offense involved moral turpitude. See Re Case No. 246, Bulletin 233, Item 10; Re Case No. 145, Bulletin 468, Item 2. In the instant matter none of the elements aforementioned is found. I conclude that the single crime of which Alfred J. Santasiero was convicted did not involve moral turpitude. Cf. Re Case No. 220, Bulletin 263, Item 8; Re Case No. 378, Bulletin 460, Item 1; Re Case No. 143, Bulletin 500, Item 6; Re Tumulty, Bulletin 558, Item 2.

Defendant has a previous adjudicated record. Effective June 2, 1947, defendant's license was suspended for five days by the local issuing authority upon being adjudged guilty of selling alcoholic beverages to a minor.

No correction of the illegal situation has been made to date. Therefore, I shall suspend defendant's license for the balance of its term ending at midnight June 30, 1948. If and when the unlawful situation is actually corrected, I shall entertain a petition to lift the suspension imposed and restore the license. However, the suspension will not be lifted in any event until at least thirty-five days after the effective date of the suspension herein imposed have elapsed. Cf. Re Benson, Bulletin 742, Item 6.

Accordingly, it is, on this 21st day of January, 1948,

ORDERED that Plenary Retail Consumption License C-906, for the 1947-48 fiscal year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Mildred Santasiero, t/a Club 88, for premises 88 - 14th Avenue, Newark, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. January 27, 1948; and it is further

ORDERED that, in the event the unlawful situation is properly corrected, an application by petition may be made to the Commissioner of Alcoholic Beverage Control for the lifting of said suspension, in accordance with the terms aforesaid.

ERWIN B. HOCK
Commissioner.

7. DISQUALIFICATION - PREVIOUS PETITION DENIED - APPLICATION HEREIN GRANTED.

In the Matter of an Application)
to Remove Disqualification be-)
cause of a Conviction, Pursuant)
to R. S. 33:1-31.2.)
Case No. 654.)
- - - - -)

CONCLUSIONS
AND ORDER

BY THE COMMISSIONER:

The petitioner was convicted of larceny, a crime which was determined, on a previous application, to involve the element of moral turpitude. See Case 403, Bulletin 491, Item 4. Since his conviction in 1940, the petitioner's criminal record is wholly clear of any arrests or convictions.

The petitioner was honorably discharged from military service in January 1946, after serving for three years. For the past two years he has been employed as a sorter in a glass manufacturing factory.

Three responsible witnesses, one of whom is a sergeant of police in the municipality where the petitioner has resided for many years, testified that the petitioner is a sober and industrious citizen and that his reputation for being honest and law-abiding is good. The police sergeant further testified that the local police records indicate that there are no pending investigations or complaints affecting the petitioner.

Since it appears that the petitioner has completely rehabilitated himself since the time of his conviction, I shall grant the requested relief.

Accordingly, it is, on this 22nd day of January, 1948,

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

ERWIN B. HOCK
Commissioner

8. FAIR TRADE - NOTICE OF COMPLETE PUBLICATION.

The next official publication of minimum resale prices pursuant to Fair Trade rules (Regulations No. 30) will become effective on March 2, 1948. Price listings must be filed with the offices of this Department not later than Friday, January 30, 1948.

It is my decision that the publication shall combine all of the prices into one complete pamphlet superseding the December 1947 complete publication and the supplemental pamphlet which was effective January 2, 1948.

In submitting price lists to the Department for this complete publication, it is requested that:

- (1) A complete schedule of all items offered for sale by manufacturers and wholesalers in this State may be submitted. Listers should recognize the extreme disadvantage they impose upon retailers who are restricted in sales promotion of brands not listed in Fair Trade pamphlets. Pursuant to a Department ruling, brands of alcoholic beverages not listed in Fair Trade publications may not be price-advertised (including direct or indirect reference to price) in any periodical, publication, circular, handbill or direct mailing piece in New Jersey.
- (2) Traditional markups of 33-1/3% on spirits, 45% on cordials and liqueurs and 50% on wines should be maintained.
- (3) It is earnestly suggested that when reductions in minimum resale prices are effected, at the same time a comparable reduction should be made in the wholesale prices to be listed in the official monthly wholesale price pamphlet.
- (4) Only manufacturers and wholesalers owning brands to be listed in Fair Trade, or wholesalers having specific written authorization from the owners of brands, may file price listings for publication in minimum resale price pamphlets.
- (5) In order to afford New Jersey licensees an equitable position of competition with licensees in adjoining states, the Department will continue to accept price filings which set forth a permissive discount for case lot purchases of listed brands. Where listers of brands choose to publish a permissive case lot discount, the phrase "Discount of _____% permitted on case lot purchases" should be used.

Notification of the proportionate share of aggregate expenses involved in the publication of the complete pamphlet will be made to participating companies as soon as the pamphlet is mailed to all retail licensees.

ERWIN B. HOCK
Commissioner.

Dated: January 22, 1948.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM, IN VIOLATION OF RULE 6 OF STATE REGULATIONS NO. 30 - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

LOUIS MARKOWITZ)
T/a WHITE STAR MARKET)
6812 Ventnor Avenue)
Ventnor City, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-4, issued by the Common Council of the City of Ventnor City.)
-----)

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

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that he sold alcoholic beverages below the minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

On January 10, 1948, the defendant sold to two ABC agents six 4/5 quart bottles of Three Feathers Reserve Blended Whiskey for the total sum of \$21.20. The established price for an individual bottle of this product is \$4.04 (see Bulletin 785, page 4), resulting in a minimum price of \$24.24 for six of such items.

The defendant has no previous adjudicated record. The license will be suspended for the minimum ten-day period, less five days for the plea, leaving a net suspension of five days. Re Cascone, Bulletin 774, Item 11.

Accordingly, it is, on this 22nd day of January, 1948,

ORDERED that Plenary Retail Distribution License D-4, issued by the Common Council of the City of Ventnor City to Louis Markowitz, t/a White Star Market, for premises 6812 Ventnor Avenue, Ventnor City, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. January 26, 1948, and terminating at 9:00 a.m. January 31, 1948.

ERWIN B. HOCK
Commissioner.

10. IMPORTANT INTERPRETATION AND RULING ON RULE 4(a) OF STATE REGULATIONS NO. 34.

TO MANUFACTURERS AND WHOLESALERS:

Rule 4(a) of State Regulations No. 34 has been promulgated by me to become effective on February 2, 1948, and provides that:

"No manufacturer or wholesaler shall deliver or cause to be delivered to a retailer any alcoholic beverages (except malt beverages) other than those alcoholic beverages itemized on a bona fide order first signed by the retail licensee or his agent. Such signature shall appear on the face of the order sheet immediately following the last item of alcoholic beverages appearing thereon. The bona fide order shall be executed and signed in duplicate, and a copy left with the retail licensee."

The Department is aware that the operations of some wholesalers entail telephone orders to the wholesaler's offices by either the retailer or the solicitor for the distributor, and recognizes the necessity for clarifying Rule 4(a) which requires a bona fide order first signed by the retailer before delivery can be accomplished. It is not the purpose of the rule to impose undue hardship upon either wholesaler or retailer. Accordingly, for the purposes of Rule 4(a) of State Regulations No. 34, but only in cases of telephone orders, a combined order and delivery slip signed by the retailer, or his agent, at the time of the delivery and bearing an itemized list of the alcoholic beverages, will be construed as compliance with the rule of the regulation.

The combined order and delivery slip must bear a legend, stamped in clear and legible type on its face, which shall read as follows:

"The undersigned retail licensee hereby acknowledges that all of the alcoholic beverages itemized on this order and delivery slip have been ordered and received by him.

It is to be noted that the combined order and delivery slip must be signed by the retailer or his agent before the actual drop-off of the merchandise is accomplished.

ERWIN B. HOCK
Commissioner.

Dated: January 27, 1948.

11. DISCIPLINARY PROCEEDINGS - CLUB LICENSE - FRONT FOR INDIVIDUAL - CLUB NOT IN ACTIVE OPERATION FOR THREE YEARS - FALSE STATEMENTS IN APPLICATION - SALES DURING PROHIBITED HOURS - PRIOR RECORD - RULE TO SHOW CAUSE DISMISSED - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against CLUB LIDO Evesham Avenue Lawnside, N. J., Holder of Club License CB-1 issued by the Borough Council of the Borough of Lawnside.

CONCLUSIONS AND ORDERS

No appearance for Defendant-licensee. Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant was served with the following charges:

"1. In your application filed with the Borough Council of the Borough of Lawnside, and upon which you obtained your current club license, you falsely stated 'No' in answer to Question 29 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, Lauretta Adams (Lauretta Adams Payne) was so interested as real and beneficial owner of the licensed business; said false statement being in violation of R. S. 33:1-25.

"2. In your aforesaid application for license, you falsely stated 'No' in answer to Question 30 which asks, 'Have you agreed to pay the club steward, club manager, any employee, or other person, any percentage of the profits derived from the business to be conducted under the license applied for?', whereas in truth and fact you had agreed to permit Lauretta Adams (Lauretta Adams Payne) to retain all of the profits derived from the licensed business; said false statement being in violation of R. S. 33:1-25.

"3. From November 8, 1946 and until the present time, you knowingly aided and abetted Lauretta Adams (Lauretta Adams Payne) to exercise, contrary to R. S. 33:1-26, the rights and privileges of your successive club licenses; in violation of R. S. 33:1-52.

"4. In your aforesaid application, you falsely stated 'Yes' in answer to Question 19, which asks, 'Has the club been in active operation in the State of New Jersey for at least three (3) years immediately prior to this application?', whereas in truth and fact you were not in such active operation for the said period; such false statement being in violation of R. S. 33:1-25.

"5. In your aforesaid application you falsely stated, in answer to Question 15 which asks for the names and addresses of all members of the governing body of the club, that Herbert Smith was a trustee of the club, whereas in truth and fact said Herbert Smith was not a trustee or a member of the governing body of the club; said false statement being in violation of R. S. 33:1-25.

"6. In your aforesaid application, you evaded and suppressed material facts by failing to answer Question 16, which asks, 'Are the names of all members as of date of this application submitted herewith?' and further failed to submit with said application the names of all the club members, contrary to Rule 10 of State Regulations No. 7; said evasion and suppression of fact being in violation of R. S. 33:1-25.

"7. On Monday, September 1, 1947, between 3:00 a.m. and 4:15 a.m., you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages and allowed the consumption of alcoholic beverages on the licensed premises, thereby violating Section 5 of an Ordinance adopted by the Borough Council of the Borough of Lawnside on April 1, 1942, as amended May 22, 1946, which prohibits any such activity between the hours of 3:00 a.m. and 7:00 a.m. on weekdays."

Defendant was also served with notice of a rule to show cause why its said license should not be cancelled and declared null and void for the following reasons:

"1. Said license was improvidently issued in violation of Rule 4 of State Regulations No. 7 in that your club had not been in exclusive continuous possession and use of a clubhouse or club quarters for at least three (3) years continuously immediately prior to the submission on June 5, 1947 of your application for license.

"2. Said license was improvidently issued in violation of Rule 10 of State Regulations No. 7 in that a list containing the names and addresses of all members of the club as of the date of filing your application for club license was not submitted together with the application upon which said license was granted."

Prior to the day of hearing, the defendant, in a letter, admitted guilt to "some of the charges" but stated it was "not guilty on the more serious ones". No one appeared for the defendant at the hearing held on the return date (October 23, 1947), and a technical plea of "not guilty" was entered and the hearing proceeded.

From the facts produced at the hearing it appears that the allegations of all the charges, and of the reasons advanced in support of the rule to show cause, are well founded. It seems useless to recite the details of such proof. Suffice to say the "club" entity, a voluntary association, originally a small social group, was used by its treasurer, Laretta Adams (Laretta Adams Payne), as a means of securing a "bargain" liquor license. It is apparent that the business conducted under this license has always been the business of the said individual and that she has exercised the rights and privileges of the license. It is apparent, also, that defendant sold alcoholic beverages during prohibited hours as set forth in charge (7). I find defendant guilty as to all charges.

Defendant has a prior record. In August 1947 its license was suspended for ten days after it had pleaded non vult to a charge of selling to non-members. Re Club Lido, Bulletin 773, Item 2.

Under all of the circumstances, I shall revoke the license. Cf. Re French-American Athletic Club, Inc., Bulletin 791, Item 2.

In view of the revocation of the license, the rule to show cause will be dismissed.

Accordingly, it is, on this 2nd day of February, 1948,

ORDERED that Club License CB-1, issued by the Borough Council of the Borough of Lawnside to Club Lido, for premises on Evešham Avenue, Lawnside, be and the same is hereby revoked, effective immediately.

ERWIN B. HOCK
Commissioner.

12. APPELLATE DECISIONS - HYLAND v. KEANSBURG, SHEEHAN AND ANDREACH.

ROBERT J. HYLAND,)
Appellant,)
-vs-)
MAYOR AND COUNCIL OF THE)
BOROUGH OF KEANSBURG, and JERRY)
SHEEHAN and BENJAMIN ANDREACH,)
trading as "JERRY SHEEHAN'S",)
Respondents)

ON APPEAL
CONCLUSIONS AND ORDER

J. Frank Weigand, Esq., Attorney for Appellant.
Roberts, Pillsbury, Carton & Sorenson, Esqs., Attorneys for Respondent Borough of Keansburg.
Edward F. Juska, Esq., Attorney for Respondents Jerry Sheehan and Benjamin Andreach.

BY THE COMMISSIONER:

This is an appeal from the action of respondent Borough Council whereby it transferred Plenary Retail Distribution License No. D-1, held by respondents Sheehan and Andreach, from premises at 11 Center Avenue to premises at 57 Church Street, Borough of Keansburg. The petition of appeal alleged that public convenience and necessity did not justify said transfer.

Through their respective attorneys, the parties hereto have agreed, by a formal stipulation, that the appeal be dismissed. No cause appearing to the contrary,

It is, on this 2nd day of February, 1948,

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

ERWIN B. HOCK
Commissioner.

13. STATE LICENSES - NEW APPLICATIONS FILED.

Frank Masino and Frank Masino, Jr., t/a Masino & Son
13 Lindsley Place, East Orange, N. J.
Application for State Beverage Distributor's License filed
January 27, 1948.

Berke Brothers Distilleries Inc.
1010 Massachusetts Ave., Boston 18, Massachusetts.
Application for Plenary Wholesale License filed January 28, 1948.

The Old Reading Brewery, Inc.
5th & Laurel Sts., Reading, Pa.
Application for Transportation License filed January 29, 1948.

ERWIN B. HOCK
Commissioner.

14. DISCIPLINARY PROCEEDINGS/ - ILLICIT LIQUOR - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JOHN & HELEN CZERKIES)
504 - 18th Avenue)
Newark 3, N. J.,)

CONCLUSIONS AND ORDER

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Holders of Plenary Retail Consumption License C-324, issued by the)
Municipal Board of Alcoholic Beverage Control of the City of)
Newark.)

Sidney Simandl, Esq., Attorney for Defendant-licensees.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendants have pleaded non vult to a charge alleging that they possessed illicit alcoholic beverages at their licensed premises, in violation of R. S. 33:1-50.

On November 14, 1947, an inspector of the State Department of Alcoholic Beverage Control, during the course of an inspection of the licensed premises, seized one 4/5 quart bottle labeled "Mount Vernon Brand Straight Whiskey 100 Proof", when his field test disclosed that the contents of said bottle were not genuine as labeled. Subsequent analysis by the Department chemist confirmed this finding.

Defendants seek to explain the discrepancy by alleging that the bottle in question had been open on the bar since they purchased the business at this location on March 8, 1946 and that the contents of said bottle were in their present condition at that time. This excuse is somewhat nullified by the fact that defendants' liquor had been tested previous to November 14, 1947 and after March 8, 1946 and found correct. Moreover, natural causes could not have added artificial color to a "straight" whiskey. The bottle has obviously been refilled in whole or part with a liquor.

In any event, the gravamen of the charge herein is "possession" of illicit liquor. Cedar Restaurant and Cafe Co. v. Hock, 135 N.J.L. 156.

Defendants' license, then covering other premises, was suspended by the local issuing authority for ten days, effective February 12, 1945, after a charge of allowing gambling on the licensed premises.

In view of the previous record, I shall suspend the license for twenty days and remit five because of the plea, Bulletin 741, Item 8, leaving a net suspension of fifteen days.

Accordingly, it is, on this 2nd day of February, 1948,

ORDERED that Plenary Retail Consumption License C-324, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to John & Helen Czerkies, for premises 504 - 18th Avenue, Newark, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. February 9, 1948, and terminating at 2:00 a.m. February 24, 1948.

Ernest D. Hock
Commissioner.