

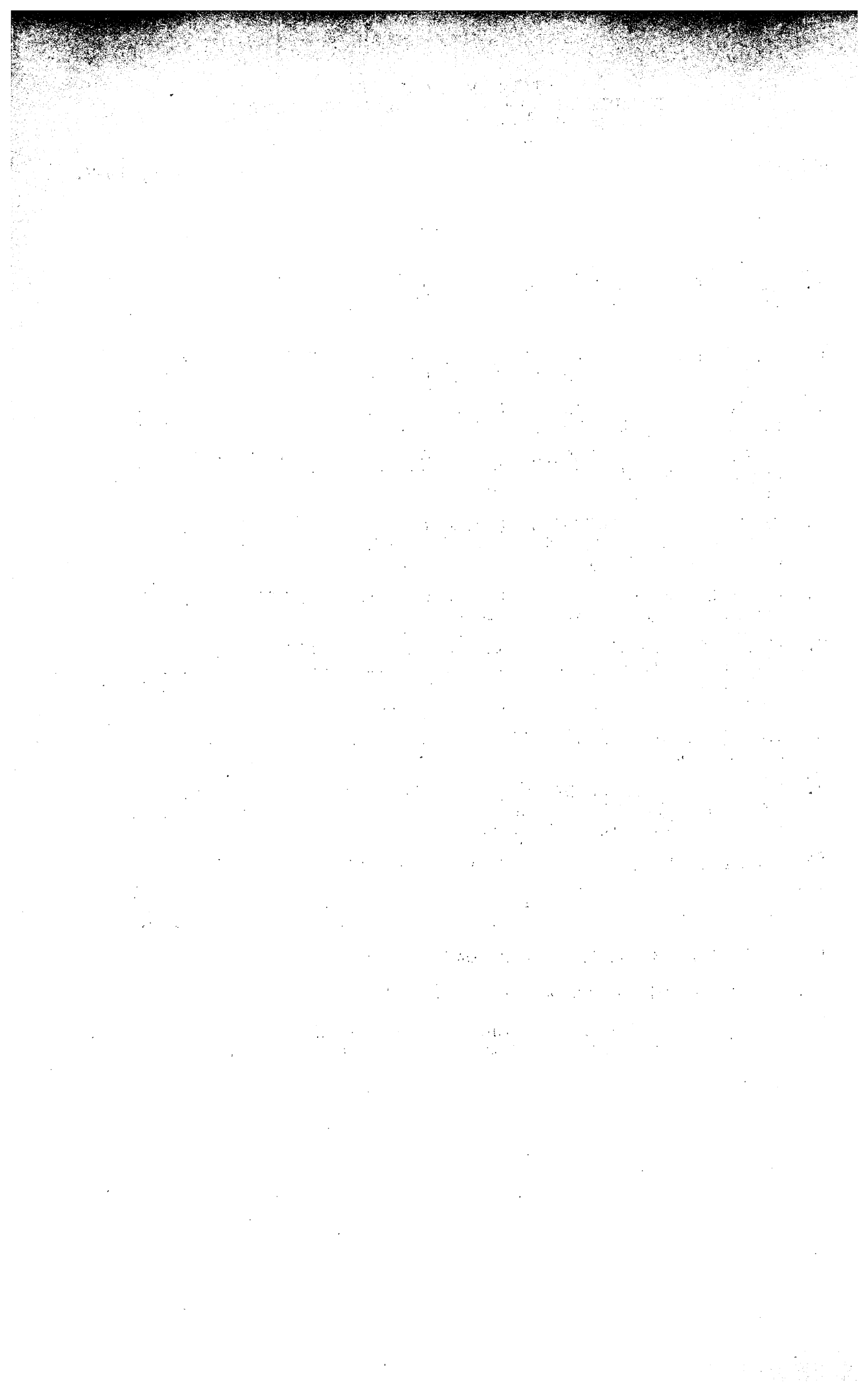
STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark, 2, N. J.

BULLETIN 744

JANUARY 8, 1947.

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

BULLETIN 744

JANUARY 8, 1947.

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR  
TRADE MINIMUM - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS, LESS  
5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

HAROLD WYMISZNER )  
T/a CAMDEN BEER GARDEN )  
275 - 13th Avenue )  
Newark 3, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-447, issued by the )  
Municipal Board of Alcoholic )  
Beverage Control of the City of )  
Newark. )  
-----

Samuel S. Ferster, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic  
Beverage Control.

Defendant pleaded non vult to a charge that he sold a 4/5 quart  
bottle of "Petri Imperial Stock Sherry Wine" below the established  
minimum consumer price, in violation of Rule 6 of State Regulations  
No. 30.

On November 7, 1946, a bartender employed by the licensee on  
his licensed premises, and then in charge of said premises, sold to  
an agent of the State Department of Alcoholic Beverage Control one  
4/5 quart bottle of "Petri Imperial Stock Sherry Wine" for the  
price of \$1.00. The established minimum retail price of this product  
was \$1.07. Bulletin 723.

The defendant states that such sales are contrary to his  
instructions and that the instant sale was made in his absence.  
However, all licensees are responsible for the acts of their agents  
in the conduct of the licensed business. Re Grant Lunch Corp.,  
Bulletin 517, Item 3; Re Quinn, Bulletin 537, Item 3.

Defendant has no prior adjudicated record. I shall impose the  
minimum suspension of ten days, less five days because of the plea,  
leaving a net suspension of five days. Re Mack Drug Co., Inc.,  
Bulletin 695, Item 9.

Accordingly, it is, on this 26th day of December, 1946,

ORDERED that Plenary Retail Consumption License C-447, issued  
by the Municipal Board of Alcoholic Beverage Control of the City of  
Newark to Harold Wymiszner, t/a Camden Beer Garden, for premises  
275 - 13th Avenue, Newark, be and the same is hereby suspended for  
a period of five (5) days, commencing at 2:00 a.m. January 6, 1947,  
and terminating at 2:00 a.m. January 11, 1947.

ERWIN B. HOCK  
Deputy Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

JOSEPH P. MAZZA )  
T/a JOE'S BAR )  
Oceanport Avenue )  
Oceanport, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Borough Council of the Borough of Oceanport. )  
----- )

Milton M. Abramoff, Esq., Attorney for Defendant-licensee.  
Anthony Meyer, Jr., Esq.; appearing for Department of Alcoholic Beverage Control.

The defendant pleaded non vult to a charge alleging that, on November 21, 1946, and prior thereto, he sold and served alcoholic beverages to minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The reported facts disclose that two nineteen-year-old soldiers were served beer at the defendant's tavern on several occasions.

The defendant's previous record includes a fifteen-day suspension in October, 1945, for possession of refilled liquor. Under the circumstances, the penalty herein will be fixed at fifteen days, less five days for the plea, or a not suspension of ten days.

Accordingly, it is, on this 31st day of December, 1946,

ORDERED that Plenary Retail Consumption License C-4, issued by the Borough Council of the Borough of Oceanport to Joseph P. Mazza, t/a Joe's Bar, for premises on Oceanport Avenue, Oceanport, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. January 6, 1947, and terminating at 2:00 a.m. January 16, 1947.

ERWIN B. HOCK  
Deputy Commissioner.

5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )  
 )  
 NEENA HOLDING CORP. )  
 82-84 Park Avenue )  
 Rutherford, N. J., )  
 )  
 Holder of Plenary Retail Distribution License D-3, issued by the )  
 Mayor and Borough Council of the )  
 Borough of Rutherford. )  
 ----- )

CONCLUSIONS AND ORDER

Morris Pashman, Esq., Attorney for Defendant-licensee.  
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

The defendant pleaded non vult to a charge alleging the sale of twelve 4/5 quart bottles of Imperial Blended Whiskey below the minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

On November 4, 1946, ABC agents purchased the twelve bottles in question for the total price of \$38.80, or two dollars under the established Fair Trade price therefor.

This is the defendant's first violation. The usual ten-day penalty, with remission of five days for the plea, leaving a net penalty of five days, will be imposed. Re Brotman, Bulletin 741, Item 7.

Accordingly, it is, on this 31st day of December, 1946,

ORDERED that Plenary Retail Distribution License D-3, issued by the Mayor and Borough Council of the Borough of Rutherford to Neena Holding Corp., for premises 82-84 Park Avenue, Rutherford, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. January 6, 1947, and terminating at 9:00 a.m. January 11, 1947.

ERWIN B. HOCK  
Deputy Commissioner.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against )

JOSEPH STESHKO )  
413-415 Avenue "C" )  
Bayonne, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-23, issued by the Board of Commissioners of the City of Bayonne. )  
----- )

A. Alfred Fink, Esq., Attorney for Defendant-licensee.  
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant pleads not guilty to a charge alleging that on October 9, 1946 he possessed on his licensed premises one 4/5 quart bottle labeled "Old Crow Brand Straight Rye Whiskey", which bottle contained an alcoholic beverage not genuine as labeled, in violation of R. S. 33:1-50.

An ABC investigator testified that on October 9, 1946 he seized a bottle of "Old Crow" on defendant's premises when his field test indicated that the contents thereof were not genuine as labeled. Subsequent analysis by the Department chemist disclosed that the bottle in question contained traces of artificial coloring whereas a genuine "Old Crow Brand Straight Rye Whiskey" has no artificial color added. The result of the test made by the Department chemist disclosing that the seized bottle contained traces of artificial coloring is admitted by defendant.

Defendant testified that he had no knowledge of the fact that the bottle had been refilled. Despite the contention of his personal innocence, the licensee must, nevertheless, be held responsible for "refills" found in his stock of liquor. Re Kurian, Bulletin 517, Item 2. I find the defendant guilty of the charge preferred herein.

Defendant has no previous adjudicated record. A minimum suspension of his license for a period of fifteen days will be imposed. Re Domenices, Bulletin 699, Item 3.

Accordingly, it is, on this 2nd day of January, 1947,

ORDERED that Plenary Retail Consumption License C-23, issued the Board of Commissioners of the City of Bayonne to Joseph Steshko, for premises 413-415 Avenue "C", Bayonne, be and the same is hereby suspended for a period of fifteen (15) days. Pursuant to notice of August 23, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK  
Deputy Commissioner.

7. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1ST TO DECEMBER 31ST 1946  
 AS REPORTED TO THE COMMISSIONER OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 53:1-19.

CLASSIFICATION OF LICENSES

County	Plenary Retail Consumption		Plenary Retail Distribution		Club		Limited Retail Distribution		Seasonal Retail Consumption		Number Surrendered Expired	Number Licenses in Effect	Total Fees Paid
	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid			
Atlantic	486	\$ 192,709.23	64	\$ 21,756.06	11	\$ 1,113.49						561	\$ 215,578.7
Bergen	815	283,250.82	287	70,044.44	47	4,899.45	31	\$ 1,372.57	4	\$ 873.75	4	1180	360,441.0
Burlington	179	64,086.13	24	5,864.80	32	4,020.08	1	25.00				256	73,996.0
Camden	454	215,325.00	73	26,926.35	58	5,694.17			3	561.49	3	585	248,507.0
Cape May	128	61,900.00	10	3,350.00	12	1,200.00						150	66,450.0
Cumberland	81	30,936.57	12	3,100.00	28	3,648.56						121	37,685.1
Essex	1377	732,345.00	349	174,402.79	85	11,148.40	26	1,269.07				1837	919,165.2
Gloucester	107	30,700.00	11	2,200.00	6	400.00						124	33,300.0
Hudson	1562	677,903.89	290	113,817.80	60	7,413.48	57	2,268.24				1969	801,405.4
Hunterdon	79	21,031.66	2	500.00	4	500.00			1	100.00	1	85	22,131.6
Mercer	425	181,994.07	45	12,200.00	39	5,150.00			1	101.06	1	509	199,445.1
Middlesex	624	244,176.46	65	16,407.96	42	2,867.28	4	157.19				735	263,608.8
Monmouth	539	239,663.41	93	32,300.00	26	3,124.59	7	261.16	24	8,567.97	25	669	283,217.1
Morris	316	96,030.55	68	16,644.52	28	2,710.00	1	25.00	7	1,165.41	7	413	113,575.4
Ocean	133	90,911.77	37	15,016.00	9	891.23						229	106,815.0
Passaic	886	342,257.53	161	44,715.49	31	3,961.37	12	500.00			2	1088	391,434.3
Salem	49	16,300.00	4	550.00	9	775.00						62	17,625.0
Somerset	187	66,397.00	33	7,550.00	12	1,050.97						232	74,987.9
Sussex	165	38,783.02	12	1,915.00	4	210.00			1	225.00	1	181	41,133.0
Union	544	277,028.75	138	53,584.52	54	6,325.00	16	800.00	2	750.00	1	753	338,488.2
Warren	144	39,474.09	16	3,057.50	23	2,392.81	1	200.00	2	188.32	2	184	45,312.7
Totals	9330	\$3,943,194.96	1799	\$ 625,397.23	620	\$ 69,495.88	156	\$ 6,878.23	45	\$12,533.00	47	11,903	\$4,657,999.5

Edward K. Leuzarder

Respectfully submitted, Adm. Inspector.

Erwin B. Hock, Deputy Commissioner

## 8. RECAPITULATION OF ACTIVITY FOR PERIOD FROM JULY 1, 1946 THROUGH DECEMBER 31, 1946

	JULY	AUG.	SEPT.	OCT.	NOV.	DEC.	TOTAL
<u>ARRESTS:</u>							
Licenseses and employees	0	4	2	0	1	1	8
Bootleggers	23	14	9	9	17	8	80
ABC agent impersonator	0	0	0	1	0	0	1
<u>SEIZURES:</u>							
Stillis - under 50 gallons	2	0	0	6	2	2	12
Over 50 gallons	1	0	0	0	0	1	2
Motor Vehicles - cars	1	1	0	0	3	1	6
trucks	7	1	2	1	1	1	13
Alcohol - gallons	388.33	1.10	1.00	13.02	0	.32	403.77
Brewed Malt Alcoholic Beverages (beer, ale, etc.) - gallons	277.82	185.99	48.82	10.40	31.19	23.84	578.06
Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons	407.29	16.47	1.21	1.00	176.70	22.15	624.82
Wine - gallons	198.21	7.60	35.21	176.80	65.53	297.28	780.63
Mash - gallons	6.2	0	.94	550.00	100.00	15.00	672.14
<u>RETAIL LICENSEES:</u>							
Total number of premises inspected	1380	1084	914	1147	950	1121	6596
Total number of premises where alcoholic beverages were gauged	550	674	875	843	710	722	4374
Total number of bottles gauged	8539	7622	13264	12785	10598	11372	64180
Total number of premises where violations were found	157	101	168	115	136	109	786
Total number of violations found	217	133	207	160	168	178	1063
<u>Type of violations found:</u>							
Unqualified employees	51	58	59	18	26	27	239
Illicit liquor - bottles	36	24	30	37	28	70	225
Regulations #38 sign not posted	74	17	32	28	18	25	194
Gambling devices	0	0	51	22	39	7	119
Prohibited signs	12	2	2	27	19	5	67
Other mercantile business	1	1	8	7	18	10	45
Price pamphlet not displayed	23	8	2	4	4	3	44
Disposal permit necessary	7	7	13	2	1	9	39
Probable fronts	7	7	6	3	6	10	39
Improper beer taps	1	6	1	6	5	4	26
Other violations	2	3	3	6	4	8	26
<u>STATE LICENSEES:</u>							
Premises inspected	2	3	15	12	8	29	69
License applications investigated	33	23	13	20	28	17	134
<u>COMPLAINTS:</u>							
Complaints assigned for investi- gation	509	344	375	410	362	382	2382
Complaints investigated, reviewed and closed	336	438	397	422	332	391	2316
Investigations completed - not closed administratively	54	5	3	15	6	11	
Investigations assigned - not yet completed	173	190	145	125	122	149	
<u>LABORATORY:</u>							
Analyses made	84	177	104	142	135	182	824
"Shake up" cases (alcohol, water, and artificial color) - bottles	6	18	8	8	8	8	56
Liquor found to be not genuine as labeled - bottles	17	46	25	50	24	75	237
<u>IDENTIFICATION BUREAU:</u>							
Criminal fingerprint identi- fications made	17	31	9	12	29	24	122
Persons fingerprinted for non-criminal purposes	316	228	199	219	145	173	1280
Identification contacts made with other enforcement agencies	351	228	183	254	150	186	1352
Motor vehicle identifications via N.J. State Police Teletype	9	36	5	13	7	14	84
<u>DISCIPLINARY PROCEEDINGS INSTITUTED:</u>							
Cases transmitted to municipalities	11	20	18	13	10	25	97
<u>Violations involved:</u>							
Sale during prohibited hours	5	4	9	6	3	7	34
Sale to minors	2	4	5	3	1	3	18
Mislabeled beer taps	0	7	1	2	3	5	18
Bookmaking	2	3	0	1	1	2	9
Unqualified employees	1	0	2	0	1	1	5
Gambling (cards)	1	1	0	0	1	0	3
Sale to non-members by club	1	1	0	1	0	0	3
Fraud in application	0	0	1	0	0	2	3

JULY AUG. SEPT. OCT. NOV. DEC. TOTAL

DISCIPLINARY PROCEEDINGS INSTITUTED (CONT'D):

Cases transmitted to municipalities (cont'd)

Violations involved:

Hostesses	0	10	11	0	0	2	3
Immoral activity	0	0	1	0	0	2	3
Pinball machines	0	0	0	0	0	3	3
Noise	0	1	0	1	0	0	2
Brawls	0	0	0	0	1	1	2
Gambling (numbers)	1	0	0	0	0	0	1
Drinks served other than ordered	0	0	0	0	0	1	1
Hindering investigation	0	0	0	0	0	1	1
Licensee working while drunk	0	0	0	0	0	1	1
Persons of ill repute on premises	0	0	0	0	0	1	1
Sale to intoxicated persons	0	0	0	0	0	1	1

Cases instituted at Department 27 21 22 20 21 25 136

Violations involved:

Illicit liquor	10	11	10	13	4	14	62
Fraud and front	3	5	6	3	3	4	24
Purchase from improper source	8	1	3	0	1	0	13
Sale to minors	1	2	1	1	4	4	13
Sale outside scope of license	4	0	2	1	2	0	9
Sale under Fair Trade	0	0	1	0	6	2	9
Sale during prohibited hours	2	0	1	0	3	1	7
Unqualified employees	1	0	3	0	1	1	6
Hindering investigation	2	0	0	1	1	1	5
Sale contrary to condition in permit	0	0	1	0	1	1	3
Storage off licensed premises	1	1	0	0	0	0	2
Issuance in excess of quota	0	2	0	0	0	0	2
Brawls	1	0	0	0	1	0	2
Improper transportation	0	0	1	1	0	0	2
Sale to non-members by clubs	0	0	0	0	1	1	2
Business conducted as a nuisance	0	0	0	0	2	0	2
Aiding illegal activity	0	0	0	0	1	0	1
Improper bottling by retailer	0	0	0	0	1	0	1
Lewdness	0	0	0	0	1	0	1
Licensee working while drunk	0	0	0	0	1	0	1
Sale to intoxicated persons	0	0	0	0	1	0	1
Slot machines	1	0	0	0	0	0	1
Gambling (numbers)	0	1	0	0	0	0	1
Minor holding more than 10% of stock	0	0	1	0	3	0	1
Mislabeled beer taps	1	0	0	0	0	0	1
Loss of Federal permit	0	0	0	1	0	0	1

Cases brought by municipalities on own initiative and reported to

Department 5 5 4 1 4 5 24

Violations involved:

Sale to minors	1	2	2	1	1	2	9
Brawls	1	0	2	0	1	1	5
Sale during prohibited hours	1	2	0	0	1	1	5
Licensee working while drunk	1	0	0	0	0	1	2
Business conducted as a nuisance	1	0	0	0	0	0	1
Inadequate view into premises during closing hours	1	0	0	0	0	0	1
Persons of ill repute	1	0	0	0	0	0	1
Bookmaking	0	1	0	0	0	0	1
Noise	0	0	0	0	1	0	1
Failure to advise issuing authority of change of facts	0	0	0	0	0	1	1
Sale to intoxicated persons	0	0	0	0	0	1	1

CANCELLATION PROCEEDINGS INSTITUTED: 0 2 1 2 0 0 5

Violations involved:

Issuance in excess of quota	0	2	0	0	0	0	2
Minor holding more than 10% of stock	0	0	1	0	0	0	1
Fraud and front	0	0	0	2	0	0	2

HEARINGS HELD AT DEPARTMENT: 51 66 49 44 29 36 275

Appeals	12	18	20	5	1	4	60
Disciplinary proceedings	18	26	16	27	18	20	125
Eligibility	9	8	5	5	7	6	40
Seizures	7	13	5	4	0	4	33
Applications for license	5	1	3	3	1	2	15
Tax Revocations	0	0	0	0	2	0	2

PERMITS ISSUED: 4807 1053 783 1879 1388 862 10772

Solicitors	2185	90	82	101	81	76	2615
Employment	1606	265	152	236	137	146	2542
Social affairs	221	322	253	468	358	231	1852
Disposal of alcoholic beverages	152	216	144	200	137	148	997
Special Wine	29	12	65	750	583	152	1591
Miscellaneous permits	614	148	87	124	92	109	1174

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against MONTCLAIR FOOD CO., INC. 517 Bloomfield Ave. Montclair, N. J., Holder of Plenary Retail Distribution License D-11 issued by the Board of Commissioners of the Town of Montclair.

CONCLUSIONS AND ORDER

Defendant-licensee, by George J. Chase, President. William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded non vult to a charge alleging that:

"On September 6, 1946, without first having obtained a special permit so to do, you sold a case of twelve 4/5 quart bottles (fifths) of Canadian Club Blended Canadian Whisky, a case of twelve 4/5 quart bottles (fifths) of Imperial Blended Whiskey, a half case of six 4/5 quart bottles (fifths) Hiram Walker's Deluxe Straight Bourbon Whiskey and a half case of six 4/5 quart bottles (fifths) of Old Plaid Blended Scotch Type Whisky below the minimum consumer price published in Bulletin 690 of this Department, in violation of Rule 6 of State Regulations No. 30."

The file herein discloses that on September 6, 1946, an employee of defendant corporation sold the items mentioned in the charge to the President of a corporation which holds a wholesale license. The purchaser has stated that he bought these items for his personal consumption.

It appears that the purchaser paid to defendant the sum of \$177.71, which was the wholesale price of these items, instead of \$233.52, which was the minimum consumer price of these items as set forth in Bulletin 690.

The president of defendant corporation alleges that a mistake was made, but admits that entries in defendant's records which purported to show a balance of \$55.81 due from the purchaser were made after investigation herein had begun. In any event, a violation of the Fair Trade Regulations is serious even if the violation is due only to carelessness. Re Gold's Drug Stores, Bulletin 732, Item 7.

Defendant has no previous adjudicated record. I shall suspend the license for ten days, less five days for the plea, making a net suspension of five days. Re Mack's Drug Co., Inc., Bulletin 695, Item 9.

Accordingly, it is, on this 3rd day of January, 1947,

ORDERED that Plenary Retail Distribution License D-11, issued by the Board of Commissioners of the Town of Montclair to Montclair Food Co., Inc., for premises 517 Bloomfield Avenue, Montclair, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. January 6, 1947, and terminating at 2:00 a.m. January 11, 1947.

ERWIN B. HOCK Deputy Commissioner.

10. APPELLATE DECISIONS - NASSO v. BRIDGEWATER TOWNSHIP.

JAMES NASSO, )  
 Appellant, )  
 -vs- )  
 TOWNSHIP COMMITTEE OF THE )  
 TOWNSHIP OF BRIDGEWATER, )  
 Respondent )

ON APPEAL  
CONCLUSIONS AND ORDER

Mayer and Mayer, Esqs., by Phil O. Mayer, Esq., Attorneys for Appellant.  
 W. Eddy Heath, Esq., Attorney for Respondent.

This is an appeal from the action of respondent on July 15, 1946, whereby it denied appellant's application for the renewal of a plenary retail consumption license for premises at State Highway 29 and Mountain Avenue, Township of Bridgewater.

In December 1945 respondent granted a plenary retail consumption license to appellant for the premises in question, but no alcoholic beverage activities were conducted thereunder apparently because repairs had to be made and equipment installed before any business could be conducted at the premises. On June 13, 1946, appellant applied to respondent for a renewal of his license for the present fiscal year. On the same day the secretary of the Planning and Zoning Board of Bridgewater Township filed with the Township Clerk a written objection to the granting of said application because "to do so would violate the zoning ordinance of the Township." After a hearing upon the written objection, held on July 15, 1946, the application for renewal was denied for the reason, among others:

"(1) It is in violation of the Township ordinance."

The evidence herein discloses that the premises in question are located in District "A" created under a zoning ordinance of Bridgewater Township. The zoning ordinance provides:

"In District 'A', no building or structure shall be used, and no building or structure shall be erected, constructed or altered to be used for any purpose other than that for a single family dwelling and its accessory uses, church, public or private school, public park, public playground, private club, and recreation areas not operated for profit, any form of agriculture or horticulture, and the sale of farm products produced on the property where such products are offered for sale, \*\*\*."

Ordinarily, therefore, premises located in District "A" could not be used for the sale of alcoholic beverages. An issuing authority may not be required to issue a license for premises where it appears that the issuance of the license would violate a local zoning ordinance. Talbot v. Keppler and Mendham, Bulletin 117, Item 1, and cases therein cited.

Appellant, however, contends that his premises are exempted from the effect of the zoning ordinance as a non-conforming use. It is necessary, therefore, to determine whether the premises in question are exempted from the effect of the zoning ordinance.

The evidence shows that on July 2, 1935 a plenary retail consumption license was issued to the then owner of the land in question, who

operated thereon a restaurant known as the Mayflower Inn, Inc. However, the building occupied by the Mayflower Inn, Inc. was destroyed by fire in October 1935, and the building was never reconstructed. Thereafter, and prior to November 2, 1937, a structure commonly known as a "diner" was moved from another location to the plot of land in question. No liquor license was issued for the "diner." On November 2, 1937, the zoning ordinance of Bridgewater Township was adopted and created District "A" as set forth above. Appellant purchased the land in question and the "diner" approximately three years ago, but he obtained no liquor license for said premises prior to December 1945.

From the foregoing it is clear, under the decided cases, that the premises may continue to be conducted as a diner despite the subsequent adoption of the zoning ordinance, but it is equally clear that the non-conforming use may not be extended. This is apparent from the language of the Court in Vogel v. Bridgewater, 121 N. J. L. 236, wherein the action of the Board of Adjustment, in sustaining denial by the building inspector of an application for building permit to erect a "bunk house" and gasoline station upon the land now owned by appellant, was affirmed. I conclude that the sale of liquor would constitute a new use in the zoned area, and would not be permissible under the non-conforming use which existed at the time the ordinance was adopted. Speake v. Closter, (unreported, decided by Supreme Court April 4, 1934); Vogel v. Bridgewater, *supra*; Green v. Newark, 131 N. J. L. 336; National Lumber Products Co. v. Ponzio, 133 N. J. L. 95.

Appellant also contends that, because the license was granted in December 1945, the renewal of the license must be granted in the absence of any evidence that the premises were improperly conducted. However, as the Court said in Zicherman v. Driscoll, 133 N. J. L. 586:

"No licensee has a vested right to the renewal of a license. Whether an original license should issue, or a license be renewed, rests in the sound discretion of the issuing authority. Unless there has been a clear abuse of discretion, this Court should not interfere with the actions of the constituted authorities."

The evidence herein discloses that the original license was issued by members of the Township Committee who did not consider the effect of the zoning ordinance, and that renewal of the license was denied after the secretary of the Planning and Zoning Board had called to the attention of the present members of the Township Committee the provisions of the zoning ordinance. A mistake was made in issuing the license originally and, under the circumstances, it is not necessary to perpetuate the mistake.

Appellant also refers to Freeman v. Hague, 106 N. J. L. 137, to support his contention that the license must be renewed. That case concerned the revocation of a building permit after the prosecutor had expended money and entered into contractual relations in reliance upon a building permit which had been granted. The present appeal does not concern the revocation of a liquor license, but the renewal thereof, which, as stated above, is a matter of discretion. Moreover, while this is probably immaterial, it does not sufficiently appear that appellant has changed his position in reliance upon the original issuance of the license. He has purchased some material which remains upon the property but outside of the building, and has purchased a bar and other equipment which have not been moved to his building. Under these circumstances, it does not appear that the case of Freeman v. Hague, *supra*, is in point.

I shall affirm the action of respondent.

Accordingly, it is, on this 3rd day of January, 1947,

ORDERED that the action of respondent be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK  
Deputy Commissioner.

11. DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS LAST PAST - APPLICATION TO LIFT GRANTED ON REHEARING.

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

CONCLUSIONS  
AND ORDER

Case No. 564.  
-----)

The petitioner was heretofore declared ineligible to hold a liquor license or to be employed on licensed premises because of his conviction of a crime involving moral turpitude. See Re Case No. 181, Bulletin 208, Item 2, decided October 13, 1937. When, in July, 1939, he applied for removal of disqualification, relief was denied because of his employment at licensed premises during the intervening period. See Re Case No. 62, Bulletin 334, Item 6. In October, 1941, it was determined that the petitioner had held an undisclosed interest in licensed premises, and the license of the nominal holder was revoked. See Re Gettes, Bulletin 482, Item 7.

Because of this recited background, I have given most careful consideration to the record presented on the instant application for lifting of the petitioner's disqualification. I find that the petitioner has no other convictions except that which originally caused him to be declared ineligible and that his criminal record, which is substantiated by information received from the local Chief of Police, is clear of any difficulties with law enforcement authorities for more than five years last past. During that period, the petitioner has conducted a business for the sale of cooking oils and has labored industriously to support his wife and child.

Independent investigation made by agents of this Department and the local authority concerning the ownership and operation of a tavern by the petitioner's wife discloses that the petitioner has no proprietary interest therein and has had no association whatever with the operation of such licensed business.

One of the petitioner's character witnesses is the local license Inspector of the municipality where the petitioner resides and where his wife's tavern is located. This witness, generally experienced in matters of this kind and professing a particular knowledge of the petitioner's situation, recommended that favorable consideration be afforded to the petitioner. It was his opinion that the petitioner, whose reputation for being honest and law-abiding he stated to be good, had achieved such reputation because of his exemplary conduct for more than five years last past, and that the petitioner's association with the alcoholic beverage industry, therefore, would not be detrimental to public interest.

In addition, three other responsible citizens of the community where the petitioner resides, one of whom is a hotel owner, another the manager of an automobile agency, and the third a manufacturer of non-intoxicating beverages, all stated that they have known the petitioner for more than seven years and that he bears an excellent reputation in the municipality and is a sober and industrious individual.

Upon mature reflection of all the evidence before me, I have reached the conclusion that the petitioner should be afforded an opportunity to demonstrate his fitness to be connected with the liquor business in this state. I sincerely trust that I shall not regret this decision. I may add that it is needless to state that, because of the petitioner's background, any future infractions of the Alcoholic Beverage Law committed by him will necessitate the imposition of stringent punishment.

The prayer of the petition will be granted.

Accordingly, it is, on this 3rd day of January, 1947,

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

ELWIN B. HOCK  
Deputy Commissioner.

12. APPELLATE DECISIONS - SALMANOWITZ v. HIGHTSTOWN.

BENJAMIN SALMANOWITZ, )  
trading as CENTRAL HOTEL, )  
Appellant, )  
-vs- )  
COMMON COUNCIL OF THE BOROUGH )  
OF HIGHTSTOWN, )  
Respondent )  
----- )

ON APPEAL  
CONCLUSIONS AND ORDER

Josephson and Josephson, Esqs., by Louis Josephson, Esq.,  
Attorneys for Appellant.  
Robert E. Dietz, Esq., Attorney for Respondent.  
David Deitz, Esq., of Counsel.

This is an appeal from the action of respondent whereby it found appellant guilty of charges of selling alcoholic beverages to two minors and suspended his license for fifteen days.

The charges involve the alleged sale of alcoholic beverages to two girls, each 18 years of age, who temporarily resided at a farm in or near Hightstown and who were employed on the farm during the harvesting season as potato pickers.

Two local police officers testified herein that, on the evening of August 16, 1946, they observed these girls as they entered appellant's premises. According to the testimony of the officers, one of the girls "slipped and fell or staggered at the entrance and then went in", and, in the opinion of one of the officers, both girls had been drinking. The girls remained in appellant's premises for five or ten minutes. Later on the same evening both girls were arrested elsewhere by these officers and held on charges of being disorderly persons.

Appellant, his son Martin Salmanowitz, and his bartender Albert Trammer, testified herein that no drinks of any kind were served to either of the girls on the evening in question. None of these witnesses has any recollection of seeing either of the girls, but appellant contends that, if they did enter his premises, it was merely for the purpose of using the ladies' room.

The real difficulty in this case is that the minor girls returned to their respective homes in Georgia and Florida immediately after the hearing below, and there is no corroborating testimony by any other witness as to the alleged sales of alcoholic beverages.

The Supreme Court has decided that, on appeals to the Commissioner, he is obliged to conduct a hearing on testimony de novo. Cino and Messina v. Driscoll, 130 N. J. L. 535. However, in this case appellant consented that secondary evidence by the Borough Clerk as to the testimony given by the girls at the hearing below might be accepted at the hearing of the appeal in lieu of producing said witnesses. Under these circumstances I conclude that appellant has waived his right to a trial de novo to the extent indicated herein.

At the hearing of the appeal the Borough Clerk testified that he had made no attempt to keep a verbatim record of the girls' testimony at the hearing below. His notes showed that the girls had testified they arrived in Hightstown about 8:00 p.m. and that they had been drinking alcoholic beverages for an hour or more before they visited appellant's premises. One girl said she had two glasses of whiskey in appellant's premises. The other girl said that she "drank four whiskeys and two beers" but it is not clear whether she testified that she obtained the drinks in appellant's premises or elsewhere. When the girls were taken, at a later date, to the licensed premises operated by Salmanowitz, one could not identify the bartender who served them and the other identified Trammer, although she had previously said that the drinks were served by "Pop." The evidence shows that the licensee, not Trammer, is known locally as "Pop."

After reviewing all the evidence, I conclude on this trial de novo that the uncorroborated evidence of the minors, necessarily weakened by the fact that it is secondary evidence, is insufficient to overcome the positive evidence of appellant and his witnesses. This is so especially since the testimony of the disinterested police officers, who fixed the elapsed time in the premises at "five or ten minutes", seriously weakened the minors' testimony that they drank two and four whiskies respectively and that one of the minors also drank two beers. This is not to be taken as a criticism of respondent's action because the members of the Common Council had the opportunity of observing the minor witnesses and may have been fully justified in believing their testimony. However, on the record presented, I am forced to reverse their action.

Accordingly, it is, on this 6th day of January, 1947,

ORDERED that the action of respondent be and the same is hereby reversed.

ERWIN B. HOCK  
Deputy Commissioner.

13. STATE LICENSES - NEW APPLICATIONS FILED.

Cape May County Beverage Company, Inc.  
3601-05 Park Blvd. and 275 West Lincoln Ave., Wildwood, N. J.  
Application for additional warehouse at East side Delsea Drive, South of Chestnut Ave., Landis Township, Vineland, N. J., filed January 3, 1947.

Supreme Liquors, Inc.  
223-225-227-229-231 Orient Ave., Jersey City, N. J.  
Application for Warehouse Receipts License filed January 6, 1947.

ERWIN B. HOCK  
Deputy Commissioner.

14. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR -- LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )  
 )  
 NICHOLAS PANAGEAS )  
 T/a PICKWICK RESTAURANT )  
 873-875 Bergen Avenue )  
 Jersey City, N. J., )  
 )  
 Holder of Plenary Retail Consumption License C-478, issued by the Board of Commissioners of the City of Jersey City. )  
 )

CONCLUSIONS AND ORDER

-----  
 Nicholas Panageas, Defendant-licensee, Pro Se.  
 Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

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

On December 12, 1946, an ABC investigator seized one 4/5 quart bottle labeled "The Blended Scotch Whisky of the White Horse Cellar" and one 4/5 quart bottle labeled "White Label Blended Scotch Whisky" when preliminary tests thereof indicated that the contents of the bottles were not genuine as labeled. Subsequent analyses of the contents of the bottles in question by the Department chemist revealed several differences in characteristics between the whiskey described on the labels and that in the bottles.

Defendant denies any knowledge relative to the violation. Nonetheless, a licensee is absolutely responsible for any "refills" found in his stock of liquor. Re Kurian, Bulletin 517, Item 2.

Defendant has no previous adjudicated record. I shall, therefore, impose a minimum suspension of fifteen days, less five days' remission for the plea entered herein, or a net suspension of ten days.

Accordingly, it is, on this 6th day of January, 1947,

ORDERED that Plenary Retail Consumption License C-478, issued by the Board of Commissioners of the City of Jersey City to Nicholas Panageas, t/a Pickwick Restaurant, for premises 873-875 Bergen Avenue, Jersey City, be and the same is hereby suspended for a period of ten (10) days. Pursuant to notice of August 23, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

*Eric B. Hook*  
 Deputy Commissioner.