

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

BULLETIN 727

AUGUST 27, 1946.

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

BULLETIN 727

AUGUST 27, 1946.

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

In the Matter of Disciplinary Proceedings against )

CHARLES GREMBOWIEC & )  
SOPHIE GREMBOWIEC, )  
t/a Sue's Bar & Grill, )  
97 Main Street, )  
Lodi, New Jersey, )

CONCLUSIONS AND ORDER

----- )  
Holders of Plenary Retail Consumption License C-10 for the 1945-46 )  
fiscal year, and now holders of )  
Plenary Retail Consumption License )  
C-10 for the 1946-47 fiscal year; )  
both issued by the Mayor and Council )  
of the Borough of Lodi. )  
----- )

Feder & Rinzler, Esqs., by Joseph A. Feder, Esq., Attorneys for Defendant-licensee Charles Grembowiec.  
Sadie Ranzenhofer, Attorney for Defendant-licensee Sophie Grembowiec.  
Harry Castelbaum, Esq., Appearing for Department of Alcoholic Beverage Control.

Defendants pleaded not guilty to the following charge:

"On May 1, 1946, you possessed an illicit alcoholic beverage at your licensed premises, viz., a 4/5 quart bottle labeled 'Calvert Reserve Blended Whiskey,' which bottle contained an alcoholic beverage not genuine as labeled; such possession being in violation of R. S. 33:1-50."

At the hearing held herein an investigator employed by the Department of Alcoholic Beverage Control testified that on May 1, 1946, he examined eighteen opened bottles of alcoholic beverages at defendants' premises and seized the bottle mentioned in the charge when his preliminary test indicated that the contents thereof were not genuine as labeled. The chemist employed by the Department of Alcoholic Beverage Control testified that an analysis of the contents of the seized bottle disclosed that the solids and acids therein were substantially lower than the solids and acids found in a genuine sample of the same product. He also testified that the proof of the liquor found in the seized bottle was 82.4° whereas the label described the proof of the contents as 86.8°. He also testified that the seized bottle contained a natural color whiskey instead of a blended whiskey with artificial color, and accordingly concluded that the contents of the seized bottle were not genuine as labeled.

Each of the two defendants testified. Charles Grembowiec testified that he worked as a bartender in the licensed premises during the daytime and that he never tampered with the seized bottle. Sophie Grembowiec testified that she had purchased the bottle in question about two or three weeks prior to May 1, 1946; that she tended bar at the licensed premises during the evenings, and that she did not tamper with the contents of the seized bottle.

The gist of the offense charged herein is the "possession" of illicit liquor. It is not denied that the seized bottle was found

on defendants' licensed premises. The chemist's testimony, which is not disputed, necessarily leads me to conclude that the bottle in question contained illicit liquor. Even if, as indicated in the testimony of Charles Grembowiec, an employee may have been responsible for the violation, nevertheless the licensees are responsible for any violations committed by an employee during the course of his employment. Re Kurian, Bulletin 517, Item 2. I, therefore, find defendants guilty as charged.

Defendants have no prior adjudicated record. Hence I shall suspend their license for the minimum period of fifteen days. Re Rudolph, Bulletin 680, Item 1.

Although this proceeding was instituted during the 1945-46 licensing period, it does not abate but remains fully effective against the renewal license for the fiscal year 1946-47. State Regulations No. 16.

Accordingly, it is, on this 14th day of August, 1946,

ORDERED that plenary retail consumption license C-10, issued by the Mayor and Council of the Borough of Lodi to Charles Grembowiec & Sophie Grembowiec, t/a Sue's Bar & Grill, for premises 97 Main Street, Lodi, be and the same is hereby suspended for fifteen (15) days, commencing at 4 A.M. August 21, 1946, and terminating at 4 A.M. September 5, 1946.

ERWIN B. HOCK  
Deputy Commissioner.

2. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary Proceedings against JOHN HERMAN, S/S Harding Highway, Hamilton Township, P.O. Mays Landing, N. J., Holder of Plenary Retail Consumption License C-26, issued by the Township Committee of the Township of Hamilton.

CONCLUSIONS AND ORDER

John Herman, Defendant-licensee, Pro Se.  
William F. Wood, Esq., Appearing for Department of Alcoholic Beverage Control.

The defendant pleaded guilty to a charge alleging that, on May 15, 1946, he possessed a 4/5 quart bottle of "Black & White Blended Scotch Whisky", which bottle contained an alcoholic beverage not genuine as labeled, in violation of R. S. 33:1-50.

This defendant formerly held a license in Buena Vista Township where, in June, 1942, he received a suspension for permitting gambling on the licensed premises.

I shall impose a penalty of twenty days for the instant violation. Cf. Re Willow Inn, Inc., Bulletin 696, Item 7.

Accordingly, it is, on this 14th day of August, 1946,

ORDERED that Plenary Retail Consumption License C-26, issued by the Township Committee of the Township of Hamilton to John Herman, for premises on S/S Harding Highway, Hamilton Township, be and the same is hereby suspended for a period of twenty (20) days, commencing at 4:00 a.m., August 19, 1946, and terminating at 4:00 a.m., September 8, 1946.

ERWIN B. HOCK  
Deputy Commissioner.

3. DISCIPLINARY PROCEEDINGS - CHARGE OF SALE OF ALCOHOLIC BEVERAGES TO MINORS DISMISSED. ALLOWING, PERMITTING AND SUFFERING THE CONSUMPTION OF ALCOHOLIC BEVERAGES BY MINORS UPON LICENSED PREMISES - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary Proceedings against

ESSEX HOLDING CORP., 1048-1050 Broad Street, Newark 2, New Jersey,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-935 for the 1945-46 and 1946-47 fiscal years, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Harold Simandl, Esq., Attorney for Defendant-licensee. Anthony Meyer, Jr., Esq., Appearing for Department of Alcoholic Beverage Control.

Defendant-corporation, through its attorney, pleaded not guilty to the following charges:

"1. On Saturday night, December 15, 1945, you sold alcoholic beverages at your licensed premises to Robert W---, Robert N---, James M---, Louis L---, Ludwig C---, and Joseph C---, minors, in violation of R. S. 33:1-77.

"2. On the occasion aforesaid, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to Robert W---, Robert N---, James M---, Louis L---, Ludwig C---, and Joseph C---, persons under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon your licensed premises, in violation of Rule 1 of State Regulations No. 20."

The testimony of an ABC inspector discloses that on December 16, 1945, at about 12:15 A.M., he observed a number of persons standing in front of defendant's licensed premises; that in particular he noticed "two youngsters leaning upon against the building near the entrance of the Essex House. Both of these youngsters were vomiting." Questioning of the two youths, according to the ABC inspector, revealed that they had been attending a banquet being held in defendant's premises under the auspices of the company by which the youths were employed. Another inspector and two investigators employed by the Alcoholic Beverage Control Department corroborated the testimony of the inspector.

The evidence discloses that approximately one hundred persons attended the banquet and one hundred and eight pitchers of beer were served. Fourteen witnesses produced by the Department of Alcoholic Beverage Control, among whom were officials of the company by which the banquet was held, testified that they observed the waiters place pitchers of beer on the various tables in the dining-room during the evening in question. Robert W---, Robert N---, James M---, and Joseph C--- (three of whom were sixteen and one of whom was seventeen on the date in question) testified respectively that they sat at the first table on the right when entering the annex room, and that during the course of the evening they each drank several glasses of beer which they poured from pitchers placed on the table by the waiter. The testimony of these minors is corroborated by the testimony of some of the adult witnesses.

Six employees of defendant testified that waiters placed the pitchers of beer on a side table or sideboard, and not directly on the tables occupied by the guests. Some of these witnesses further testified that they did not at any time observe any minors in attendance at the banquet.

I am satisfied that the testimony of the various witnesses produced by the Department concerning the manner in which the pitchers of beer were served depicts accurately what transpired on the evening in question. Despite their testimony to the contrary, it is quite apparent that the defendant's employees paid little heed to those attending the banquet. The maitre d'hotel testified that he visited the room "eight or ten or a dozen times" and did not see any minors there at any time. The banquet manager testified that he went into the room several times during the course of the banquet but did not see any persons there whom he believed to be minors. The General Manager claimed that he made "visits" to the room but observed no minors. These observations, if made, must have been most perfunctory. This conclusion seems inescapable in view of the fact that, in addition to the above named four minors who claim to have consumed beer at the banquet, four other minors (three aged seventeen and one aged twenty) testified that they were present but did not consume any alcoholic beverages, and it was stipulated that two other young men, whom Department witnesses identified as being present at the banquet, were under the age of twenty-one years. Thus, no less than ten of the one hundred persons attending this function were minors, some of them sixteen-year-old high school boys.

If, in fact, careful observations had been made by the defendant's witnesses, they would have seen that there were a number of minors present, and very probably would have discovered that some of these youths were helping themselves to beer.

The evidence is insufficient to sustain charge (1) in that it fails to disclose a sale, technical or otherwise (R.S. 33:1-1(w)), of alcoholic beverages by the defendant to any of the minors, and said charge is hereby dismissed. However, I find that the method of serving beer at the banquet on the night in question made said alcoholic beverages available to all of the guests, including minors, indiscriminately and without proper safeguards against consumption thereof by minors, and I further find that four of the minors, namely, Robert W---, Robert N---, James M---, and Joseph C---, consumed beer on the licensed premises on the evening in question. Inasmuch as adequate proof is lacking relative to consumption of alcoholic beverages by Louis L--- and Ludwig C---, minors, I find defendant not guilty of so much of charge (2) as relates to them. I find the defendant guilty of charge (2) in so far as said charge alleges that defendant allowed, permitted and suffered the consumption of alcoholic beverages on its licensed premises by the aforementioned Robert W---, Robert N---, James M--- and Joseph C--- on the evening in question, in violation of Rule 1 of State Regulations No. 20.

This is the first case of its kind to come to the attention of this Department, i.e., where the service is made at a hotel in a banquet room to such a large number of guests attending a private function. Were this the usual case of sale, service and delivery of alcoholic beverages to minors, I would, in view of the number of minors involved and their extreme youthfulness, have imposed a very heavy-fisted penalty. However, in view of all of the circumstances in this case of novel impression, I will suspend the license for a period of only twenty days.

Although this proceeding was instituted during the 1945-46 licensing period, it does not abate but remains fully effective against the renewal license for the fiscal year 1946-47. State Regulations No. 16.

Accordingly, it is, on this 16th day of August, 1946,

ORDERED that plenary retail consumption license C-935, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark, to Essex Holding Corp., for premises 1048-1050 Broad Street, Newark, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 A.M. August 26, 1946 and terminating at 2:00 A.M. September 15, 1946.

ERWIN B. HOCK  
Deputy Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES FOR RESALE - FALSE STATEMENT IN LICENSE APPLICATION - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

RAYMOND GRIMES & PETER SCHEIB,  
t/a Atomic Club,  
107-48th Street,  
Union City, New Jersey,

CONCLUSIONS  
AND ORDER

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Holders of Plenary Retail Consumption License C-233, issued by the Board of Commissioners of the City of Union City.

Raymond Grimes and Peter Scheif, defendant-licensees, by Raymond Grimes, Partner.  
Harry Castelbaum, Esq., Appearing for Department of Alcoholic Beverage Control.

Defendants have pleaded non vult to the following charge:

"On June 28, 1946 you, a New Jersey retailer, sold alcoholic beverages, viz., three kegs of beer, to another retail licensee, William O'Neill, t/a 'Bill O'Neill's Tavern', 123-125 Carr Avenue, Keansburg, New Jersey, for resale in his business, whereby you violated Rule 15 of State Regulations No. 20, and since such sale exceeded the privileges of your plenary retail consumption license as defined by R. S. 33:1-12(1), you thereby also violated R. S. 33:1-2."

Defendants have also pleaded non vult to a supplemental charge alleging, in substance, that they had violated R.S. 33:1-25 by falsely denying in their application for a license that any person mentioned in the application had been interested in any license which was suspended, whereas Raymond Grimes had formerly held a license in Jersey City which had been suspended for three days effective June 12, 1939.

The file in this case discloses that, a few days prior to June 28, 1946, one William Sheridan visited defendants' premises and asked Raymond Grimes if he could spare "a half or two" to help out Louis McKay who was tending bar for William O'Neill at the latter's licensed premises in Keansburg. Grimes has known Sheridan

for twenty years and had recently served as a "shipmate" of Louis McKay in the United States Navy. Grimes told Sheridan that he was unable to do anything at that time, but that he expected a shipment of beer within a few days. On June 28, 1946, Sheridan returned to defendants' premises with his car, and obtained three half-barrels of beer which he subsequently delivered to O'Neill's licensed premises. It is quite apparent that Grimes sold the beer as a favor to his friends, and not for profit. Grimes states that he did not realize the seriousness of this transaction, and thought he was doing a good turn. The violation is serious because of enforcement difficulties which arise if retailers purchase alcoholic beverages from others than licensed manufacturers and wholesalers. However, the transaction was an isolated one and no aggravating circumstances appear. Hence on this charge I shall suspend the license for the minimum period of fifteen days. Re Rappaport, Bulletin 641, Item 1.

As to the supplemental charge: Raymond Grimes states that the application was filled out by his attorney, and that "in haste, he either failed to ask me about the previous charge, or I failed to answer 'yes' to a question about that charge." It is very probable that the disclosure of this suspension, which occurred more than seven years ago, would have had no effect upon the issuance of the current license. However, it has been stated in a number of cases that licensees must answer all questions in the application fully and frankly, and the necessity for insisting upon this is readily apparent. Under the peculiar circumstances of this case, I conclude that an additional suspension for a period of five days because of the violation set forth in the supplemental charge will be sufficient. From this total suspension of twenty days, five days will be remitted because of the plea, making a net suspension of fifteen days.

Accordingly, it is, on this 21st day of August, 1946,

ORDERED that plenary retail consumption license C-233, issued by the Board of Commissioners of the City of Union City to Raymond Grimes & Peter Scheib, t/a Atomic Club, for premises 107-48th Street, Union City, be and the same is hereby suspended for fifteen (15) days, commencing at 3 A.M. August 29, 1946, and terminating at 3 A.M. September 13, 1946.

ERWIN B. HOCK  
Deputy Commissioner.

5. LIMITATION OF NUMBER OF RETAIL LICENSES - DETERMINATION UNDER SECTION 7, CHAPTER 147, P. L. 1946 THAT FAILURE TO APPLY FOR RENEWAL WAS DUE TO CIRCUMSTANCES BEYOND CONTROL OF LICENSEE.

In the Matter of an Application by )

JOHN J. WEINMANN, )  
115 Chancery Lane, )  
Trenton, New Jersey, )

On Petition

DETERMINATION

For Relief under the Provisions )  
of Section 7 of Ch. 147 of the )  
Laws of 1946. )

John J. Weinmann, Pro Se.

Petition herein recites that John J. Weinmann was the holder of plenary retail consumption license C-18 for the fiscal year 1945-46, issued by the Board of Commissioners of the City of Trenton. This license, which covered premises 12-14 East State Street, expired by its terms at midnight June 30, 1946.

The petition further recites that, during the 1945-46 fiscal year, the interest of petitioner in premises known as 12-14 East State Street was disputed by the owner thereof, and that petitioner, in order to avoid costly litigation, filed, during said fiscal year, two separate applications with the Board of Commissioners of the City of Trenton for the transfer of said license to other premises. The first application was withdrawn after petitioner had been advised that the location would not be acceptable to said Board. The second application was denied on June 22, 1946, by said Board after written objections had been filed opposing the transfer of the license because of the location of the premises sought to be licensed. No appeal was filed because the denial of the transfer appeared to be proper.

The petition further recites that petitioner thereafter secured other premises at 542 East State Street which comply with the local ordinance, but that any attempt to transfer the license to said premises during the fiscal year 1945-46 was prevented by the expiration of the license on June 30, 1946, a period of only eight days after the second application for transfer had been denied.

Petitioner states in his petition that his right to possession of premises known as 12-14 East State Street "is questionable, if not already terminated," and that he is unable, therefore, to apply for a renewal of his license at said premises for the fiscal year 1946-47. He, therefore, prays for a determination by the State Commissioner in accordance with the provisions of Section 7 of Ch. 147 of the Laws of 1946.

Subsequent to the filing of the petition herein, Section 46 of an ordinance of the City of Trenton adopted June 23, 1936, was amended on August 1, 1946. Section 46, as originally adopted, prevented the issuance of any new plenary retail consumption licenses in the City of Trenton, but the amendment adopted August 1, 1946, added thereto a new paragraph reading as follows:

"Nothing in this section shall be deemed to prevent the issuance of a new license to a person who files application therefor within sixty days following the expiration of the license renewal period if the State commissioner shall first determine in writing that the applicant's failure to apply for a renewal of his license was due to circumstances beyond his control, as provided by section 7, chapter 147 of the Laws of 1946."

On August 13, 1946, the petitioner herein filed with the Board of Commissioners of the City of Trenton an application for a new license for premises known as 542 East State Street, Trenton. It is apparent that this application was filed within sixty days following the expiration of the license renewal period.

After examining all the facts, I hereby determine that the applicant's failure to apply for a renewal of his license for the present fiscal year was due to circumstances beyond his control. See Section 7, Ch. 147 of the Laws of 1946. In view of this determination the Board of Commissioners of the City of Trenton may consider on its merits the application filed by John J. Weinmann for a plenary retail consumption license for premises at 542 East State Street, Trenton, despite the limitation of such licenses set forth in Section 2, Ch. 147 of the Laws of 1946, and may issue said license if the premises comply with the provisions of the local ordinance as amended.

ERWIN B. HOCK  
Deputy Commissioner.

Dated: August 21, 1946.

6. DISCIPLINARY PROCEEDINGS - PERMITTING PIN BALL MACHINE ON LICENSED PREMISES - EMPLOYING A PERSON UNDER 15 YEARS OF AGE - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

Jeanette Goldberg, t/a Jewell Bar & Grill, 8 Outwater Lane, Garfield, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-31, issued by the City Council of the City of Garfield. )

Chandless, Weller & Kramer, Esqs., by Julius E. Kramer, Esq., Attorneys for Defendant-licensee. Anthony Meyer, Jr., Esq., Appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded guilty to charges that she (1) possessed and allowed, permitted and suffered on her licensed premises a bagatelle or pin ball machine, in violation of Rule 7 of State Regulations No. 20, and (2) employed on her licensed premises a person under the age of fifteen years, in violation of Rule 6 of State Regulations No. 13.

Defendant admits the possession of a so-called "pin ball" machine or game on her then licensed premises. This is a violation of the rule which prohibits the possession of such games, by name, on any licensed premises. The minor employee, who allegedly was employed as assistant to the chef, was admittedly known by the defendant to be under the age of fifteen years.

Defendant, in submitting her guilty plea, endeavors to minimize the two violations on a theory that they are "technical". Frankly, such violations of regulations, not at all difficult to understand, are not in my opinion "technical".

I shall suspend defendant's license for ten days on each of the two charges, Re Carteret Club of Trenton, Bulletin 672, Item 12; Re Kneble, Bulletin 649, Item 8, with an additional five days because of a prior suspension in 1943 for a "gambling" charge. Re Goldberg, Bulletin 624, Item 1. Five days of the total will be remitted because of the plea, leaving a net suspension of twenty days.

Accordingly, it is, on this 21st day of August, 1946,

ORDERED that Plenary Retail Consumption License C-31, issued by the City Council of the City of Garfield to Jeanette Goldberg, t/a Jewell Bar & Grill, for premises 8 Outwater Lane, Garfield, be and the same is hereby suspended for a period of twenty (20) days, commencing at 4:00 A.M. August 28, 1946, and terminating at 4:00 A.M. September 17, 1946.

ERWIN B. HOCK Deputy Commissioner.

7. DISCIPLINARY PROCEEDINGS - HINDERING AND FAILING TO FACILITATE AN INVESTIGATION - LICENSE SUSPENDED FOR A PERIOD OF 5 DAYS.

In the Matter of Disciplinary Proceedings against

BABE'S RECREATION, INC., )  
208 Main Avenue, )  
Wallington, New Jersey, )

Holder of Plenary Retail Consump- )  
tion License C-8 issued by the )  
Mayor and Council of the Borough )  
of Wallington. )

CONCLUSIONS  
AND ORDER

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Aaron Heller, Esq., and Aldon S. Patlen, Esq., Attorneys for )  
Defendant-licensee. )  
Harry Castelbaum, Esq., Appearing for Department of Alcoholic )  
Beverage Control. )

Defendant-licensee pleaded not guilty to a charge alleging that on June 20, 1946, Frank T. Berosky, the former holder of a license for the premises in question, violated R. S. 33:1-35 by hindering and failing to facilitate an investigation being made by agents of the State Department of Alcoholic Beverage Control.

The testimony taken herein established that on June 20, 1946, during the course of an investigation as to alleged gambling on the premises in question, Frank T. Berosky took three pieces of paper from the bar and refused to surrender them to Inspector Brooks although requested to do so. Inspector Brooks testified that each of the slips had contained the name of a horse, and that these slips had been surrendered to him voluntarily by the bartender, Edward Berosky, a brother of the former licensee. Frank T. Berosky admitted that he took the slips and stated that he returned them to his brother because his brother complained that the slips had been unlawfully taken from his pocket by the Inspector. It is apparent that Frank T. Berosky did not know the true facts because he was not on the premises at the time of the conversation between the representative of this Department and his brother, and I am satisfied from the evidence that the slips were voluntarily surrendered by the brother. In any event, the former licensee had no right to take the law into his own hands or to interfere in any way with the investigation. It is the duty of licensees to cooperate fully with ABC agents, and failure to do so constitutes a violation of R. S. 33:1-35.

It also appears that other documentary evidence was seized during the course of the investigation, and that all the other evidence is now in the files of the Department of Alcoholic Beverage Control.

After Frank T. Berosky had testified, and prior to the introduction of additional evidence by defendant, the attorneys for defendant withdrew the plea of not guilty and entered a plea of non vult to the charge herein. They also entered into a stipulation whereby they agreed to turn over to the Department the slips in question within ten days from the date of hearing or, if the slips cannot be produced, to permit the testimony of Inspector Brooks as to the contents of the slips to be considered as correctly setting forth the writing upon said slips. I shall accept the plea and approve the stipulation.

Neither the licensee nor Frank T. Berosky has any prior record. Under the peculiar circumstances of this case, I shall suspend defendant's license for a period of five days.

Accordingly, it is, on this 16th day of August, 1946,

ORDERED that plenary retail consumption license C-8, issued by the Mayor and Council of the Borough of Wallington to Babe's Recreation, Inc., for premises 208 Main Avenue, Wallington, be and the same is hereby suspended for five (5) days, commencing at 3 A.M. August 26, 1946, and terminating at 3 A.M. August 31, 1946.

ERWIN B. HOCK  
Deputy Commissioner.

8. DISCIPLINARY PROCEEDINGS - PURCHASE OF ALCOHOLIC BEVERAGES FROM ANOTHER RETAILER - UNLABELED BEER TAP - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

WILLIAM O'NEILL, )  
t/a Bill O'Neill's Tavern, )  
123-125 Carr Avenue, )  
Keansburg, New Jersey. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-25 issued by the Municipal Council of the Borough of Keansburg. )  
----- )

Edward F. Juska, Esq., Attorney for Defendant-licensee.  
Harry Castelbaum, Esq., Appearing for Department of Alcoholic Beverage Control.

Defendant pleaded non vult to the following charges:

"1. On June 28, 1946, you, a New Jersey retail licensee, purchased, without special permit therefor, alcoholic beverages for resale in your business, viz., three kegs of beer, from a person not the holder of a New Jersey manufacturer's or wholesaler's license; such purchase by you being in violation of Rule 15 of State Regulations No. 20."

"2. On June 29, 1946, you possessed on your licensed premises a barrel from which beer was being drawn through a spigot or other dispensing apparatus which did not contain the name or brand of the manufacturer of that beer; such being in violation of Rule 1 of State Regulations No. 22."

The file in this case discloses that, at some time prior to June 28, 1946, one William Sheridan visited defendant's premises and spoke to a friend, Louis McKay, who was then employed as a bartender by defendant. McKay told Sheridan that the business "would be going fine if he could only get some more beer," and Sheridan promised that, if he could see any in the City, he would bring it down. It was subsequent to this conversation that

Sheridan arranged to obtain three half-barrels of beer from Raymond Grimes. See Re Grimes and Scheib, decided herewith. The beer was delivered by Sheridan to defendant's premises on the night of June 28, 1946, and was received by another bartender who was then on duty. The amount of money paid for the beer was approximately the same as the amount paid to Grimes. After the beer was received, one barrel thereof was attached to a line leading to the bar. The spigot at the other end of this line contained merely a black blank and did not display the name of the beer being drawn from the tap. It might be well also to note that McKay alleges that the licensee knew nothing of this transaction and that he intended to "surprise the boss." In any event, the licensee is responsible for the acts of his agents performed in the conduct of the licensed business. Re Kurian, Bulletin 517, Item 2.

Defendant has no prior adjudicated record. This violation is serious because of the enforcement difficulties which arise if retailers purchase alcoholic beverages from other than licensed manufacturers and wholesalers. This appears to be an isolated transaction, and the minimum penalty heretofore imposed in a somewhat similar case consisted of a suspension of the license for a period of fifteen days. Re Bollinger, Bulletin 641, Item 2. The minimum suspension for a mislabeled beer tap consists of a suspension for a period of three days. Re Capriotti, Bulletin 563, Item 9. The present case, however, is somewhat aggravated by the fact that the purchase was not made directly from the other retailer. Under all the circumstances, I shall suspend the license on the both charges mentioned herein for a period of twenty days, less five days for the plea, making a net suspension of fifteen days.

Accordingly, it is, on this 21st day of August, 1946,

ORDERED that plenary retail consumption license C-25, issued by the Municipal Council of the Borough of Keansburg to William O'Neill, t/a Bill O'Neill's Tavern, for premises 123-125 Carr Avenue, Keansburg, be and the same is hereby suspended for fifteen (15) days, commencing at 6 A.M. August 29, 1946, and terminating at 6 A.M. September 13, 1946.

ERWIN B. HOCK  
Deputy Commissioner.

9. STATE LICENSES - NEW APPLICATIONS FILED.

Munson G. Shaw Co., Inc.  
400 Madison Avenue,  
New York 17, N. Y.

Application filed August 26, 1946 for transfer of Plenary Wholesale License W-72 from Munson G. Shaw; Netty Shaw; Munson G. Shaw, Jr.; James Goggin and Sibyl Shaw Boit, t/a Munson G. Shaw Co.

10. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC AND OTHER BEVERAGES, FURNITURE AND FIXTURES IN SPEAKEASY ORDERED FORFEITED - SPEAKEASY OWNER'S APPLICATION FOR RETURN OF FURNITURE AND FIXTURES DENIED.

Case No. 6991

In the Matter of the Seizure on )  
May 31, 1946, of a quantity of )  
alcoholic beverages, soda, furni- )  
ture and fixtures at 503 Berkley )  
Street, in the City of Camden, )  
County of Camden, and State of )  
New Jersey. )

On Hearing

CONCLUSIONS AND ORDER

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David Brady, Pro Se.  
Harry Castelbaum, Esq., Appearing for the Department of Alcoholic Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic and other beverages and fixtures and furnishings, described in a schedule attached hereto, seized on May 31, 1946 at 503 Berkley Street, Camden, N. J., constitute unlawful property and should be forfeited.

On May 31, 1946, Roy Alvin Philips of Camden reported to the police that he had lost bonds and cash, and in his recital of his activities stated that he had visited a "Club" at the above address and there purchased alcoholic beverages. The premises are not licensed for the sale of alcoholic beverages.

The State Department of Alcoholic Beverage Control was informed of these facts and accordingly, ABC agents interviewed Philips and Daniel Tate, a taxi cab driver who had driven Philips to the "Club". Philips and Tate gave the agents signed statements to the effect that they were at the "Club" in the early morning of the day in question and that Daniel Brady there sold them alcoholic beverages. Brady was brought to the police station and there identified by Philips and Tate as the person who had sold and served them the alcoholic beverages. Brady admitted that both men had been at the premises at the time stated but claimed that he had given a bottle of beer to Philips.

The agents then obtained and executed a search warrant for the three story brick building on the premises. In a room which had a window inscribed with the name of the "Club", the agents found a number of empty beer and whiskey bottles, bottles of soda and a table apparently used for gambling. A large room on the third floor was equipped with a bar, a coca-cola ice box with beer and other alcoholic beverages, tables, chairs, a cash register, a dart board and a steel cabinet for a slot machine. The slot machine was found on the second floor.

Neither Brady nor the "Club" held a license authorizing either of them to sell or serve alcoholic beverages.

The agents seized all of the above described articles except the slot machine, which was seized by the local police. Brady was arrested on charges of unlawfully selling alcoholic beverages and possessing alcoholic beverages with intent to sell such beverages unlawfully.

Brady has since pleaded guilty to the charges and was sentenced to pay a fine of \$100 or serve thirty days in the county jail. He also pleaded guilty to the charge of possessing gambling devices and was sentenced to pay a fine of \$150.

The seized alcoholic beverages were intended for sale at this speakeasy and hence are illicit. R.S. 33:1-1(i). Such illicit alcoholic beverages, together with the other beverages, fixtures and furnishings, seized therewith in the building constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(y), R. S. 33:1-2 and R. S. 33:1-66.

When the matter came on for hearing, pursuant to R.S.33:1-66, David Brady appeared and sought return of the fixtures and furnishings.

Brady asserts that there is an unpaid balance due on the fixtures and that the concern from whom they were purchased has advised him that it does not intend to take the time or trouble to oppose forfeiture of such articles but will hold Brady responsible for the debt. Brady's declared objective is to regain these fixtures to minimize his loss by reason of the seizure and, incidentally, to use them in setting up what he characterized as a legitimate restaurant or candy store.

Brady does not dispute that the facts which resulted in the seizure are as stated. Apparently, he operated a small time gambling and speakeasy establishment. He does not present any substantial or meritorious reason for the return of any of the seized property; seemingly, he is prompted by the hope that if he makes the request, it may be granted.

One of the effective measures provided for by law to stamp out speakeasies is the forfeiture of its fixtures and equipment, articles which contribute to the success of its operation. Cf. Seizure Case No. 6898, Bulletin 687, Item 1. No reason has been presented why that course should not be followed in the instant case. Brady's request for the return of the seized fixtures and furnishings is therefore denied.

Accordingly, it is DETERMINED AND ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property and that the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and State, county and municipal institutions, or destroyed in whole or in part at the direction of the State Commissioner of Alcoholic Beverage Control.

Dated: August 22, 1946.

ERWIN B. HOCK  
Deputy Commissioner.

#### SCHEDULE "A"

- 7 bottles of various brands of alcoholic beverages.
- 50 - bottles of beer
- 1 - gallon of wine
- 172 - empty beer bottles
- 43 - bottles of soda
- 36 - empty soda bottles
- 60 - empty whiskey bottles
- 75 - empty glasses
- 6 - wooden tables
- 31 - wooden chairs
- 1 - bar
- 24' - neon tubing
- 1 - coca-cola ice box
- 1 - National cash register
- 1 - dart board

11. DISCIPLINARY PROCEEDINGS - ORDER SUSPENDING LICENSE STAYED PENDING APPLICATION FOR WRIT OF CERTIORARI.

In the Matter of Disciplinary Proceedings against

ESSEX HOLDING CORP., )  
1048-1050 Broad Street, )  
Newark, New Jersey, )

Holder of Plenary Retail Consump- )  
tion License C-935, for 1945-46 )  
and 1946-47 fiscal years, issued )  
by the Municipal Board of Alcoholic )  
Beverage Control of the City of )  
Newark. )  
----- )

O R D E R

It appearing that by Conclusions and Order herein dated August 16, 1946, plenary retail consumption license C-935, for premises 1048-1050 Broad Street, Newark, was suspended for a period of twenty days commencing at 2 A.M. August 26, 1946, and terminating at 2 A.M. September 15, 1946; and

It further appearing that said licensee 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 said licensee 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 23rd day of August, 1946,

ORDERED that the effect of the order dated August 16, 1946, 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 within fifteen (15) days from the date hereof, and thereafter prosecuted with diligence.

ERWIN B. HOCK  
Deputy Commissioner.

## 12. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - NOTICE

A writ of certiorari was allowed yesterday by Mr. Justice Oliphant, of the New Jersey Supreme Court, to review the order made by me on August 14, 1946, against Cedar Restaurant & Cafe Co., t/a East End Casino & Surf Club, 717 Ocean Avenue, Long Branch, N. J., which order suspended the license of Cedar Restaurant & Cafe Co. for a net period of thirty days, commencing August 19, 1946.

The writ was "allowed upon conditions that prosecutor (Cedar Restaurant & Cafe Co.) shall not further violate R.S. 33:1-50 (possession of illicit alcoholic beverages - "refills") and that this cause shall be brought on for hearing at the next term of Court, namely, October 1, 1946."

At the outset, it should be noted that the allowance of the writ does not adjudicate, or intend to adjudicate, upon any of the issues raised by the prosecutor. In general, it may be said that the allowance of the writ merely authorizes the prosecutor to appeal my decision to the New Jersey Supreme Court. This is exemplified by the condition in the writ requiring the prosecutor to "not further violate" the law prohibiting the possession of "refills" on licensed premises.

I stress this to impress upon all licensees that the "refill" law continues to remain in full force and effect and rigorous enforcement of that law will continue as in the past. Any licensee who violates the law does so at his peril and, if the writ is dismissed and my decision is sustained, appropriate penalties for interim offenses will be strictly administered as heretofore.

By reason of the allowance of the writ, the suspension against Cedar Restaurant & Cafe Co. has been held in abeyance pending the decision of the Court. Since fundamental issues respecting the "refill" law are raised by the prosecutor for determination by the Supreme Court, ordinary fairness requires that those licensees now serving suspensions for violations of that law should not be placed in any different position from that of the prosecutor and should not be deprived of exercising the privileges of their licenses pending the decision of those issues by the Court. Accordingly, I have today, on my own motion, lifted temporarily the suspension imposed against each of the ten licensees now being served for "refill" violations, to wit:

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|--|---|
| (1) Rebecca Kravis,<br>1643 Atlantic Ave.,<br>Atlantic City, N. J. | 90 days terminating<br>September 29 at 12:01 A.M. |
| (2) Ellbee, Inc.,<br>459 Broad St.,<br>Newark, N. J.               | 40 days terminating<br>August 31 at 2 A.M.        |
| (3) Anthony A. Spagnuolo,<br>712 Broadway,<br>Newark, N. J.        | 65 days terminating<br>October 2 at 2 A.M.        |

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|--|---|
| (4) Biondi & Firschbaum,<br>554 Lyons Ave.,<br>Irvington, N. J.  | 30 days terminating<br>September 5 at 2 A.M.      |
| (5) John Ostrowski,<br>419 Hudson St.,<br>Hackensack, N. J.  | 20 days terminating<br>September 10 at 3 A.M.     |
| (6) Charles E. Betz,<br>W. Park Ave. & Rte #35,<br>Ocean Township,<br>RFD #1, Asbury Park, N. J.               | 25 days terminating<br>September 14 at 3 A.M.     |
| (7) Alverta C. Sofronev,<br>2074 Black Horse Pike,<br>Hamilton Township,<br>P.O. McKee City, N. J.             | 20 days terminating<br>September 8 at 4 A.M.      |
| (8) Helen Tomasello,<br>Black Horse Pike, So. of 12th St.,<br>Folsom Borough,<br>P.O. Box 147, Hammonton, N.J. | 30 days terminating<br>September 18 at 12:01 A.M. |
| (9) John Herman,<br>S/S Harding Highway,<br>Hamilton Township,<br>P.O. Mays Landing, N. J.                     | 20 days terminating<br>September 8 at 4 A.M.      |
| (10) Chas. & Sophie Grembowiec,<br>97 Main St.,<br>Lodi, N. J.   | 15 days terminating<br>September 5 at 4 A.M.      |

Each of these licensees has been appropriately notified by telegram. If and when my decision is sustained in the Court, additional orders will be entered requiring these licensees to serve the balance of their respective suspensions.

In addition, to obviate the necessity for further applications to the Courts raising the same questions now at issue, and so that all licensees will be placed on a parity, the effective date of any suspension imposed in "refill" cases, now pending or hereafter instituted, will not be fixed unless and until those questions have been resolved favorably to the Department of Alcoholic Beverage Control.

*Erwin B. Hock*

ERWIN B. HOCK,  
DEPUTY COMMISSIONER.

Dated: August 23, 1946.