

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

BULLETIN 486

DECEMBER 12, 1941.

1. MORAL TURPITUDE - AGGRAVATED VIOLATION OF NATIONAL PROHIBITION ACT INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

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. 187  
-----)

BY THE COMMISSIONER:

In 1925 petitioner was convicted of the crime of assault and battery and fined \$10.00; in 1927 he was held for the Grand Jury on charges of atrocious assault and battery and carrying a concealed weapon, but the Grand Jury did not indict; in 1930 he was convicted in a Federal Court of conspiracy to violate the National Prohibition Act, as a result of which he was sentenced to serve two years in a Federal Penitentiary. He was released in April 1932 and has not been arrested or convicted of any crime since that time.

Petitioner testified that for about two years after his release he engaged in the business of buying and selling bankruptcy stocks; that for three years thereafter he and his wife conducted a confectionery store, and that for the past four years he has been employed as a buyer and salesman by his brother, who is engaged in the wholesale fruit and produce business. He further testified that, for the past eight years he and his wife have resided at the hotel where they now live.

Petitioner's testimony as to his good conduct during the past nine years, and his employment and residence, has been corroborated by another wholesale fruit and produce dealer who has known him for the past fifteen years and known him intimately for the past four years; a retired produce dealer, who has known him for forty years; and the manager of the hotel, who has known him since 1936.

The Chief of Police of the municipality in which petitioner resides has certified that there are no pending investigations or complaints against him.

The conviction in 1930, which resulted in a two-year sentence, appears to be of such a serious character as to involve moral turpitude. Hence he is disqualified by the statute.

I am satisfied, however, from the testimony presented, that petitioner has conducted himself in a law-abiding manner for more than nine years last past. I believe also that, despite his prior conviction for assault and battery in 1925 and his arrest on more serious charges in 1927, petitioner herein has turned over a new leaf since his last conviction in 1930. I conclude from the evidence that petitioner's association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 22nd day of November, 1941,

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

ALFRED E. DRISCOLL,  
Commissioner.

2. MORAL TURPITUDE - ROBBERY INVOLVES MORAL TURPITUDE.

\* DISQUALIFICATION - APPLICATION TO LIFT - CONVICTION FOR ASSAULT AND BATTERY WITHIN LAST FIVE YEARS - APPLICATION DENIED.

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. 185.  
----- )

BY THE COMMISSIONER:

Petitioner, now twenty-nine years of age, acquired a lengthy and serious record during his youth. In 1925, when no more than thirteen, he was apparently convicted of robbery and released on six months' probation. In 1926 he was convicted of breaking and entering, sentenced to the reformatory and apparently released after three months. In 1927 he was convicted of disorderly conduct and fined \$5.00. In 1928 he was convicted of assault and battery and fined \$25.00. In 1929 he was convicted of disorderly conduct and fined \$10.00. In the same year, after two arrests in other matters which did not result in any proceedings, he was convicted of breaking and entering, and sentenced to the State Reformatory for an indefinite term, being released after fifteen months. In 1931 he was convicted of highway robbery and carrying a concealed weapon, sentenced to a term of two years in State's Prison and released on January 23, 1933 at the age of twenty.

Even disregarding the earlier convictions, it is clear that the last mentioned instance, being for a robbery committed by petitioner when eighteen years of age, necessarily involves moral turpitude and hence disqualifies him from engaging in the liquor industry in this State. R. S. 33:1-25, 26; Re Case No. 278, Bulletin 397, Item 5. Also see Re Case No. 36, Bulletin 149, Item 1 and Re Case No. 321, Bulletin 396, Item 12 (dealing with the question of age).

However, more than five years having elapsed since that 1931 conviction, petitioner here seeks, pursuant to R. S. 33:1-31.2, to have his disqualification removed.

Petitioner is unmarried and has lived in New Jersey (and apparently in the same municipality) all his life, with the exception of a brief period during February and March 1936 when he was in Michigan.

Petitioner states that, after his release from prison in 1933, he worked for several months for the Hercules Powder Company as a handyman and was then discharged when the Company learned of his record; that he was recalled by the Company about a year later (1934)

and worked as a "fireman on the crane" and then "putting up the acetate work" but was eventually laid off in 1936 when the Company cut down on production; that he then made his brief sojourn in Michigan, looking for work at a strike-bound area there; that, upon his return to New Jersey, he got a job as caretaker for an athletic club in his home town and is still working at such employment; that he has also been a professional boxer and football player ever since his release in 1933; that, moreover, during the last summer, he served as a lifeguard at the municipal playground.

Petitioner produced three character witnesses - a high school teacher in the municipality, who is a member of the club where petitioner is working as caretaker and who has known him "familiarily for the past ten years"; the local postmaster who has known him "for about seven or eight years"; and a local barber who has known him for about eleven years.

The high school teacher testified that petitioner has actually turned over a "new leaf," that he enjoys this reputation among the local residents, and that "even the Borough officials consider him a worthwhile citizen or else they wouldn't have hired him for a lifeguard." He and the other two character witnesses testified that, in their opinion, he is leading an honest and law-abiding life.

Were it not for one unfortunate incident in petitioner's otherwise clear record since 1933, I would indeed conclude that petitioner has merited the removal of his disqualification. However, I note that on October 31, 1937 petitioner was convicted for assault and battery in this State and fined \$25.00. Apparently what occurred is that petitioner, while on the street, saw a friend being ejected from a dance and, apparently upon the theory of "my friend right or wrong," stepped in and beat up the man who was running the dance.

Now, notoriously, the liquor industry is subject to grave temptations and equally grave dangers of social abuse. Hence, under the Alcoholic Beverage Law, the State Commissioner may remove a person's criminal disqualification to engage in that industry only when fully satisfied that the petitioner "has conducted himself in a law-abiding manner" for the last five years and "that his association with the alcoholic beverage industry will not be contrary to the public interest." R. S. 33:1-31.2. Accordingly, when a petitioner seeking such removal has actually had a lengthy past record (even though acquired during his youth), the State Commissioner is duty bound to deny the removal unless finding, among other things, that the petitioner has a wholly clear record for at least five years last past. Cf. Case No. 58, Bulletin 362, Item 8, and cases there cited.

Petitioner's conviction in October 1937, although not appearing to involve moral turpitude, nevertheless bars any such finding as to the last five years of his record. Hence, although I do not wish to appear harsh to a person who has seemingly made (and I sincerely hope continues to make) fine progress in living down the serious misdeeds of his youth, I must, albeit with reluctance and regret, turn down his petition.

However, if petitioner continues in his present law-abiding conduct, I will be glad to entertain a future application for the removal on October 31, 1942, which will then show a clear record for full five years.

Accordingly, the present petition is denied.

ALFRED E. DRISCOLL,  
Commissioner.

Dated: November 26, 1941.

## 3. ACTIVITY REPORT FOR NOVEMBER, 1941.

To: Alfred E. Driscoll, Commissioner

ARRESTS: Licensees - - - - - 0 Bootleggers - - - - - 22  
 Total number of persons arrested - - - - - 22

SEIZURES: Stills - 1 to 50 gallons daily capacity - - - - - 6  
 50 gallons and more daily capacity - - - - - 4  
 Total number of stills seized - - - - - 10  
 Mash - gallons - - - - - 1,200  
 Motor vehicles - Trucks - - - - - 1  
 Passenger cars - - - - - 3  
 Total number of motor vehicles seized - - - - - 4  
 Beverage alcohol - gallons - - - - - 9.75  
 Brewed malt alcoholic beverages (beer, ale, etc.) - gallons - 21.90  
 Wine - gallons - - - - - 58.95  
 Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons 20.07

RETAIL LICENSEES:

Number of premises in which were found:  
 Illicit (bootleg) liquor - 10 "Fronts" (concealed ownership) - 4  
 Gambling devices - - - - - 6 Improper beer tap markers - - - - 0  
 Prohibited signs - - - - - 5 Stock disposal permits necessary 8  
 Unqualified employees - - - 52 Other types of violations - - - - 6  
 Total number of premises where violations were found - - - - - 88  
 Total number of premises inspected - - - - - 1,279  
 Total number of unqualified employees found - - - - - 85  
 Total number of bottles gauged - - - - - 11,162

STATE LICENSEES:

Premises inspected - - - - - 50  
 License applications investigated - - - - - 6

COMPLAINTS:

Investigated, reviewed and closed - - - - - 176  
 Investigation assigned, not yet completed - - - - - 459

LABORATORY:

Analyses made - - - - - 137  
 "Shake-up" cases (alcohol, water and artificial coloring) - - - 15  
 Liquor found to be not genuine as labeled - - - - - 18

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made - - - - - 34  
 Persons fingerprinted for non-criminal purposes - - - - - 72  
 Identification contacts with other enforcement agencies - - - - 217  
 Motor vehicle identifications via N. J. State Police Teletype - 68

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities - - - - - 19  
 Cases instituted at Department - - - - - 12

HEARINGS HELD AT DEPARTMENT:

Appeals - - - - - 4 Eligibility - - - - - 7  
 Disciplinary proceedings - - 23 Tax revocations - - - - - 3  
 Seizures - - - - - 6  
 Total number of hearings held - - - - - 43

PERMITS ISSUED:

Unqualified employees - - - - - 438  
 Solicitors - - - - - 131  
 Social affairs - - - - - 308  
 Home manufacture of wine - - - - - 1,399  
 Disposal of alcoholic beverages - - - - - 63  
 Miscellaneous permits - - - - - 56  
 Total number of permits issued - - - - - 2,395

Respectfully submitted,  
 E. W. GARNETT,  
 Chief Deputy Commissioner.

4. MORAL TURPITUDE - ROBBERY AND AIDING PRISONERS TO ESCAPE INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

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. 159.  
- - - - - )

BY THE COMMISSIONER:

In 1923 petitioner was convicted of robbery and in 1926 of aiding prisoners to escape from a prison farm. On each occasion he was sentenced to serve two to three years in jail, being finally released in June 1928.

The crime of robbery per se involves moral turpitude. Re Case No. 278, Bulletin 397, Item 5, and Re Case No. 141, Bulletin 455, Item 5. Aiding prisoners to escape would also seem to involve the same element.

In this proceeding, petitioner requests that his disqualification resulting from such convictions be removed pursuant to R. S. 33:1-31.2.

He testified that shortly after his release from prison, he obtained employment as a laborer at a Federal Ordnance Depot and that he has been employed there ever since. He is now a foreman in charge of storage of ammunitions and, at times, has had as many as fifty persons under his supervision. He explained that the reason for the instant application is that he will be eligible for retirement on a pension in the near future and thereafter he may desire to obtain a liquor license.

In support of his reputation and character, he produced a member of the State Legislature who has known him for ten years and who testified that petitioner has completely lived down his past and has become a decent and respectable citizen of his community. The Acting Chief of Police of the municipality where petitioner has resided for fourteen years and who has known petitioner for ten years gave evidence to the same effect. In addition, he stated that several months ago, he was requested by the authorities in charge of the Ordnance Depot to make a complete investigation of all of its employees, including petitioner. In doing so, he ascertained that the police records are clear of any arrests, complaints or investigations against petitioner and that he bears a splendid reputation for being an honest and law-abiding member of society. Petitioner also produced a letter from the commanding officer of the Depot, in which it is certified that "This office has no evidence of Mr. \_\_\_\_\_ having violated any laws during his period of employment at this establishment (13 years)."

It appears from the evidence that petitioner's regeneracy has been complete since 1928 and that his association with the alcoholic beverage industry will, therefore, not be contrary to the public interest.

Accordingly, it is, on this 4th day of December, 1941,

ORDERED, that petitioner's statutory disqualification because of the convictions described herein be and the same is hereby lifted, in accordance with the provisions of R. S. 35:1-31.2.

ALFRED E. DRISCOLL,  
Commissioner.

5. ELIGIBILITY - THIRD DEGREE BURGLARY - MORAL TURPITUDE - APPLICANT INELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

December 4, 1941

Re: Case No. 394

On October 29, 1940, applicant was placed on probation by a Judge of the Court of General Sessions in the City of New York after he had pleaded guilty to the crime of burglary in the third degree.

The Penal Law of the State of New York provides that:

"Any person who

"1. With intent to commit a crime therein, breaks and enters a building, or a room, or any part of a building; or

"2. Being in any building, commits a crime therein and breaks out of the same,

"Is guilty of burglary in the third degree."

Applicant testified at the hearing herein that during a period of six weeks prior to April 1, 1940, he transported a number of bundles of clothing to and from a warehouse and sorted clothing at the warehouse; that after the fourth week of his employment, he learned that the clothing had been stolen; that he continued to work thereafter because he needed the money.

It appears from the testimony of a member of the Police Department of the City of New York, who was produced by the applicant, that, for some time prior to April 1, 1940, three other individuals had been engaged in the practice of breaking into various lofts, stealing large quantities of clothing and bringing it to the warehouse where applicant was a "packer." The Police Officer testified that applicant facilitated the investigation after he and the three other individuals were arrested on April 1, 1940.

In view of the plea of guilty, however, the question of applicant's guilt or innocence cannot be redetermined in this proceeding. On the facts stated, the crime was of such a serious nature that it clearly involved moral turpitude.

It is recommended that the pending application for a solicitor's permit be denied and that applicant be advised that he is not eligible to be employed by a liquor licensee.

APPROVED:

ALFRED E. DRISCOLL,  
Commissioner.

Edward J. Dorton,  
Deputy Commissioner  
and Counsel.

6. MORAL TURPITUDE - UTTERING WORTHLESS CHECKS, GRAND LARCENY AND EMBEZZLEMENT INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - VIOLATION OF ALCOHOLIC BEVERAGE LAW WITHIN LAST FIVE YEARS AS EMPLOYEE AND UNDISCLOSED OWNER OF STOCK OF CORPORATE LICENSEE - APPLICATION DENIED.

In the Matter of an Application )	
to Remove Disqualification be-	
cause of a Conviction, pursuant )	CONCLUSIONS
to R. S. 33:1-31.2.	
)	
Case No. 155.	
- - - - - )	

BY THE COMMISSIONER:

Petitioner has a lengthy record.

In 1921 he was arrested on a charge of assault and battery; in 1922 for loitering and in 1923 for assault and battery. These charges were dismissed. In 1924 he was convicted of loitering and sentenced to thirty days in jail. In 1926 he received a suspended sentence for disorderly conduct and resisting arrest. In 1927 he was released from a charge of false pretenses after the complaint was withdrawn. In 1928 he pleaded guilty to uttering worthless checks and grand larceny, and placed on probation for three years. Several months after this sentence, he was again taken into custody for issuing another worthless check and committed to jail for thirty days. In 1929 he pleaded non vult to two charges of embezzlement and placed on probation for three years. For violation of probation, he was sentenced to twelve months in prison, then resentenced to six months in prison and finally again given a three-year probation term. In 1933 he was arrested for manslaughter (automobile) but not indicted, and, in the same year, again arrested for embezzlement, but this indictment was nolle prossed. In 1941 he was arrested for assault and battery but the Grand Jury failed to return an indictment thereon.

This Department has already decided that the element of moral turpitude was involved in the crimes of uttering worthless checks and grand larceny committed by petitioner in 1928 and also in the crime of embezzlement committed by him in 1929. Re Club Murray Corporation, Bulletin 452, Item 3.

In addition, the cited case also found that, despite petitioner's disqualification, for a period of almost three years from March 1938 he was the undisclosed owner of 50% of the stock of the corporate licensee and that he had also been employed there as a bartender. Indeed, in the instant proceeding, he admitted that ever since 1935 he had acted as a bartender.

It is true that petitioner has not been convicted in criminal court during the five years last past. However, that fact, standing alone, does not ipso facto entitle petitioner to the relief sought. Re Case No. 177, Bulletin 478, Item 10; Re Case No. 178, Bulletin 478, Item 12; Re Case No. 146, Bulletin 479, Item 2; Re Case No. 174, Bulletin 479, Item 3; Re Case No. 164, Bulletin 481, Item 1. Under the statute, I must be satisfied that his association with the alcoholic beverage industry will not be contrary to the public interest. No such finding can be made in a case where, as here, petitioner's record shows such a strong propensity for running afoul of the law and where, during the aforesaid five year period, he has employed a deliberate subterfuge to circumvent the provisions of the Alcoholic Beverage Law.

The petition is denied.

Dated: December 4, 1941.

ALFRED E. DRISCOLL,  
Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGE BELOW FAIR TRADE MINIMUM - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary )  
Proceedings against )

JOHN BOSCO and PATSY BOSCO, )  
37 Coles Street, )  
Jersey City, N. J., )

CONCLUSIONS  
AND ORDER

Holders of Plenary Retail Con- )  
sumption License C-504, issued )  
by the Board of Commissioners )  
of the City of Jersey City. )  
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John Bosco and Patsy Bosco, Pro Se.  
G. George Addonizio, Esq., Attorney for the Department of  
Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensees have pleaded guilty to a charge of selling an alcoholic beverage below Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

The Department file discloses that on October 16, 1941 an investigator, in the presence of another investigator, purchased a pint bottle of Wilson "That's All" Whiskey for \$1.45 from Patsy Bosco, one of the licensees. The minimum consumer price at which pint bottles of this whiskey could be sold at the time was \$1.55. Bulletin 480.

The licensees offer no explanation for the violation except that according to Patsy Bosco, he did not have time to look up the new price list.

Bulletin 480 was mailed to all licensees on October 7, 1941 and all the minimum consumer prices set forth therein became effective October 10, 1941, at 10:00 A.M. On October 16, 1941, the date of the violation, the licensees had not as yet consulted the new Fair Trade Price List. Licensees are bound at their peril to know the rules and regulations and comply strictly therewith. The licensees have no previous convictions of any kind. The license will, therefore, be suspended for ten days. Re Stein, Bulletin 478, Item 11; Re Bernie Feldman's Liquor Store, Inc., Bulletin 482, Item 11; Re A & S Liquor Store, Inc., Bulletin 484, Item 10.

By entering a guilty plea in advance of the date set for hearing, the licensees have saved the Department the time and expense of proving its case. Five days of the penalty will, therefore, be remitted.

Accordingly, it is, on this 5th day of December, 1941,

ORDERED, that Plenary Retail Consumption License C-504, heretofore issued to John Bosco and Patsy Bosco by the Board of Commissioners of the City of Jersey City, be and the same is hereby suspended for a period of five (5) days, commencing December 9, 1941, at 2:00 A.M., and concluding at 2:00 A.M. December 14, 1941.

ALFRED E. DRISCOLL,  
Commissioner.



8. AUTOMATIC SUSPENSION OF LICENSE UPON CRIMINAL CONVICTION FOR VIOLATION OF ALCOHOLIC BEVERAGE LAW - APPLICATION TO LIFT - PROPER SUSPENSION, IF ANY, TO BE DETERMINED IN DISCIPLINARY PROCEEDINGS PRESENTLY PENDING - APPLICATION GRANTED.

In the Matter of a Petition )  
to lift the automatic suspen- )  
sion of Plenary Retail Distri- )  
bution License D-1, issued by )  
the Board of Commissioners of )  
the Town of Raritan (Somerset )  
County) to )

CONCLUSIONS  
AND ORDER

JOSEPH PINTO, )  
4 East Somerset Street, )  
Raritan (Somerset County), )  
New Jersey. )  
-----)

BY THE COMMISSIONER:

Joseph Pinto, a "package" store licensee, was today (December 5, 1941) sentenced in criminal court to a fine of \$200.00 for the sale of wine from his truck (and hence off his licensed premises) in violation of the Alcoholic Beverage Law.

Such conviction resulted in the automatic suspension of his license under R. S. 33:1-31.1.

A petition is now before me praying that this suspension be lifted until decision is rendered in the disciplinary proceedings against Pinto now pending before this Department in the self-same matter. See R. S. 33:1-31.1.

As to the violation, the general facts appear to be that the licensee, on July 12, 1941, was making deliveries of alcoholic beverages and soft drinks from his truck to the homes of customers who purportedly had given him a "standing" order for such weekly deliveries; that a youth (holding a minor's employment permit from this Department) was helping him on the truck at the time; that this youth, when asked by an investigator of this Department, readily sold him a gallon jug of wine from the truck.

There is dispute as to how far the licensee may have authorized or acquiesced in this particular sale, and also as to whether he may actually have been soliciting business from house to house. In any event, by reason of the youth's sale to the investigator, the licensee was arrested, resulting in his present conviction. Contemporaneous with the criminal proceedings, action was instituted by this Department to determine (1) whether the truck (which was seized at time of the arrest) should be confiscated; (2) whether Pinto's license should be suspended or revoked for selling off licensed premises and for the sale by a minor in his employ; and (3) whether the helper's permit should likewise be suspended or revoked. Several hearings were held by the Department in these affiliated matters (the last on December 3, 1941), with considerable testimony being taken on petitioner's method of doing business on his so-called "route."

Now, the purpose of the automatic suspension is to ensure that, when a licensee is convicted in criminal court for violating the Alcoholic Beverage Law, there is swift and sure penalty against his license. See Re Panasevitz, Bulletin 485, Item 3.

In the present case the licensee urges, in effect, that it would be actually unfair to continue the automatic suspension of his license pending decision in the Department's disciplinary proceeding; that proper penalty (if any) may be fully determined in that already pending proceeding; that, if the license is to remain suspended until decision therein, a greater period of time may elapse than will be viewed in such proceeding as adequate penalty in the case, thus resulting in the licensee's being unduly penalized.

I think there is fundamental merit to the licensee's claim in this case. There is no way of gauging the proper quantum of penalty in advance of the transcription of the testimony and full perusal of such evidence. I am mindful that, as a practical matter, time will inevitably be required to transcribe the necessarily lengthy testimony taken at the various hearings; to study and determine the disputed questions as to how far the licensee authorized or acquiesced in the youth's sale and as to whether the licensee was really soliciting from house to house; and to reach a full and sound conclusion in the case.

Now, I would sweep aside these considerations if actually the violation involved were of such serious character that the public interest required the immediate suspension of the licensee's business and its continued suspension until full decision were reached in the Department's disciplinary proceeding. However, the violation, viewed in its worst light and with all doubts and disputes taken against the licensee, does not appear to be of this extreme character.

Hence, full fairness warrants that the automatic suspension of Pinto's license be lifted, and that adequate penalty upon the license be permitted to await the decision in the already pending disciplinary proceeding. The pendency of that proceeding before this Department will guarantee no unnecessary delays in rendering that decision, and further, that penalty (if any) will be wholly adequate. Such penalty, of course, will be in addition to and quite apart from the penalty imposed in the criminal court.

The present case is wholly distinguishable from my recent language in Re Panasevitz, supra, where I stated (among other things) that I would not lift an automatic suspension until an adequately penalizing length of time had elapsed. Such language was designed to show that, where a licensee files a petition to lift an automatic suspension on claim that he has already served his penalty in a previously adjudicated disciplinary proceeding, the lifting would nevertheless be granted when, and only when, the license has actually remained under suspension for what, in the opinion of the State Commissioner, is a sufficiently penalizing length of time. It had primarily in view those instances where a municipality may, in its disciplinary proceedings, have meted out too lenient a penalty.

Accordingly, it is, on this 5th day of December, 1941,

ORDERED, that the aforesaid automatic suspension be lifted, effective immediately.

ALFRED E. DRISCOLL,  
Commissioner.

9. BONUSES, ALLOWANCES AND OTHER SIMILAR INDUCEMENTS - REGULATIONS NO. 35 - MANUFACTURERS AND WHOLESALERS PROHIBITED FROM DIRECTLY OR INDIRECTLY GIVING SUCH INDUCEMENTS TO RETAILERS - REPORTS TO BE FILED ON CALENDAR MONTH BASIS - RULES 3, 4 AND 5 AMENDED.

December 9, 1941

TO ALL MEMBERS OF THE LIQUOR AND WINE INDUSTRY IN NEW JERSEY:

Rules 4 and 5 of State Regulations No. 35 now require the monthly filing of statements by liquor and wine manufacturers, wholesalers and salesmen, reporting payment of money by manufacturers and wholesalers to the salesmen and by the salesmen to retailers. As the rules are presently set up, the first report is due December 15th covering the period from November 11th to December 10th.

Since the promulgation of State Regulations No. 35, numerous manufacturers and wholesalers have requested that the report period be changed to a calendar month basis. It has been represented that their books are kept on that basis and that extreme inconvenience would result if the reports covered a period from the eleventh of one month to the tenth of the next month.

It has also been represented that the present requirement that the reports be filed within five days after the conclusion of the report period is unreasonable because so short, and that it will be a potential source of innocent violation of the rules because of the mechanical problems involved in making and filing reports in so brief a time.

The requested changes seem reasonable and I foresee no possibility of resulting disadvantage to the Department. Rules 4 and 5 will be amended accordingly.

Rule 3 of State Regulations No. 35 prohibits those engaged in the sale of wine and liquor to retailers from directly or indirectly giving to the retailers cash bonuses, gifts, rebates, allowances, and similar inducements in connection with the sale of wine and liquor. Lest there be any misunderstanding, and to prevent any possibility of circumvention by cheating licensees who may seek to utilize employees other than their salesmen to pay rebates and kick-backs to retailers after they have been promised by the salesmen, the rule will be clarified and fortified. The intent of the rule, in line with statutory direction, was to prohibit the payment of rebates and kick-backs to retailers by any device, however circuitous or indirect. However, the language of the rule appears unnecessarily narrow in the light of its purpose, and consequently it too will be amended.

Accordingly, effective immediately, Rules 3, 4 and 5 of State Regulations No. 35 are amended to read as follows:

"3. No holder of a solicitor's permit or any individual or member of a partnership licensee shall, directly or indirectly, give to a New Jersey licensed retailer any cash bonus, gift, rebate, allowance or other similar inducement in connection with the sale of alcoholic beverages other than malt alcoholic beverages to such retailer; nor shall any manufacturer

or wholesaler of such beverages, directly or indirectly, through its stockholders, officers, directors, solicitors, missionary men, or other employees or representatives, give to a New Jersey licensed retailer any such cash bonus, gift, rebate, allowance or other similar inducement.

"4. On or before the tenth day of each calendar month, each manufacturer and wholesaler engaged in the sale in New Jersey of alcoholic beverages other than malt alcoholic beverages shall file with the State Commissioner of Alcoholic Beverage Control a statement, under oath, in a form to be prescribed by said Commissioner, reporting in detail all moneys paid by such manufacturer or wholesaler to each holder of a New Jersey solicitor's permit employed during the calendar month immediately preceding the date on which the statement is required to be filed.

"5. On or before the tenth day of each calendar month, each holder of a New Jersey solicitor's permit shall file with the State Commissioner of Alcoholic Beverage Control a statement, under oath, in a form to be prescribed by said Commissioner, reporting in detail all moneys received by him, directly or indirectly, from any licensed manufacturer or wholesaler of alcoholic beverages other than malt alcoholic beverages, together with a statement of cash payments made by him, directly or indirectly, to New Jersey licensed retailers during the calendar month immediately preceding the date on which the statement is required to be filed."

In view of the amendment of Rules 4 and 5 herein made, the exigencies of time, and to consolidate the two reports which otherwise would be filed in a short space of time, the filing date of the first report, due on December 15, 1941, is hereby extended until January 10, 1942. The report required to be filed January 10, 1942 will therefore cover the period from November 11, 1941 to December 31, 1941. Thereafter, succeeding reports will cover only the calendar month immediately preceding the filing date on which the report is due.

Publication of the official form in which the reports must be made will be made in due time prior to the first filing date.

ALFRED E. DRISCOLL,  
Commissioner.

10. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENTS IN LICENSE APPLICATIONS CONCEALING THE INTEREST OF OTHERS - AIDING AND ABETTING NON-LICENSEES TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSES - FAILURE TO FILE NOTICE OF CHANGES IN FACTS SET FORTH IN LICENSE APPLICATIONS - PRESENT OFFICERS AND STOCK-HOLDERS OF THE CORPORATION INNOCENT OF WRONGDOING - LICENSE SUSPENDED FOR BALANCE OF TERM, WITH LEAVE TO PETITION TO LIFT AFTER 10 DAYS UPON CORRECTION OF LEASING ARRANGEMENTS.

In the Matter of Disciplinary  
Proceedings against

MALCOLM ENTERPRISES, INC.,  
226-240 McBride Avenue,  
Paterson, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump-  
tion License C-166, issued by the  
Board of Alcoholic Beverage Control  
of the City of Paterson.

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

BY THE COMMISSIONER:

Charges were served upon the licensee alleging that:

"1. In her application for license dated September 6, 1940, filed with the Board of Alcoholic Beverage Control of the City of Paterson, upon which Plenary Retail Consumption License C-166 for the year 1940-41 was transferred to Mary Maloney, your predecessor in interest from whom said license was transferred to you, Mary Maloney falsely stated 'No' in answer to Question 28 therein which asks, 'Has any individual....other than the applicant any interest directly or indirectly in the license applied for or in the business to be conducted under said license?', whereas in truth and fact Eugene Lamond had such interest; said false statement being in violation of R. S. 33:1-25.

"2. In or about February, 1941, Mary Maloney, your predecessor in interest, failed to file with the Board of Alcoholic Beverage Control of the City of Paterson within ten days after the occurrence thereof, a written notice of the change occurring in the facts as set forth in her license application for the year 1940-41 by reason of the interest in her license and the business to be conducted thereunder acquired by Matteo Comito, said failure being in violation of R. S. 33:1-34.

"3. Since on or about September 6, 1940 and until May 28, 1941 Mary Maloney, your predecessor in interest, from whom Plenary Retail Consumption License C-166 was transferred to you, knowingly aided and abetted Eugene Lamond, a non-licensee, and from February, 1941 and until May 28, 1941 Mary Maloney knowingly aided and abetted Matteo Comito, a non-licensee, to exercise the rights and privileges of her license contrary to R. S. 33:1-26, in violation of R. S. 33:1-52.

"4. In your application for license dated May 28, 1941, filed with the Board of Alcoholic Beverage Control of the City of Paterson, upon which Plenary Retail Consumption License C-166 for the year 1940-41 was transferred to you, you falsely stated 'No' in answer to Question 23 therein which asks, 'Has any.... individual other than the stockholders hereinbefore set forth any beneficial interest directly or indirectly in the stock held by said stockholders?', and Question 28 therein which asks, 'Has any individual .....other than the applicant any interest directly or indirectly in the license applied for or the business to be conducted under said license?', whereas in truth and fact Eugene Lamond, who was not named as a stockholder had such an interest, said false statements being in violation of R. S. 33:1-25.

"5. In or about June 1941, you failed to file with the Board of Alcoholic Beverage Control of the City of Paterson within ten days after the occurrence thereof, a written notice of the termination of the interest of Matteo Comito and the acquisition of an interest by Joseph LaGreca in your license and the business to be conducted thereunder, said failure being in violation of R. S. 33:1-34.

"6. In your application for license filed with the Board of Alcoholic Beverage Control of the City of Paterson dated June 24, 1941 upon which Plenary Retail Consumption License C-166 for the year 1941-42 was granted to you, you falsely stated 'No' in answer to Question 23 therein which asks, 'Has any.....individual other than the stockholders hereinbefore set forth any beneficial interest directly or indirectly in the stock held by said stockholders?', and Question 28 therein which asks 'Has any individual.....other than the applicant any interest directly or indirectly in the license applied for or the business to be conducted under said license?', whereas in truth and fact Eugene Lamond and Joseph LaGreca who were not named as stockholders had such interest; said false statements being in violation of R. S. 33:1-25.

"7. Since on or about May 28, 1941 and until August 20, 1941 you knowingly aided and abetted Eugene Lamond, a non-licensee, and from June 1941 and until August 20, 1941 you knowingly aided and abetted Joseph LaGreca, a non-licensee, to exercise the rights and privileges of your license contrary to R. S. 33:1-26, in violation of R. S. 33:1-52."

Defendant-licensee, by its present officers, who were not involved in any of the alleged violations, has pleaded guilty to the charges preferred herein.

The evidence, which was introduced at the hearing, shows that in February 1941 Matteo Comito purchased a one-half interest in the licensed business from Eugene Lamont (named in the charges as Eugene Lamond), a brother of Mary Maloney, in whose name the license was then held.

In April 1941, Malcolm Enterprises, Inc. was incorporated. The shares of the corporation were then issued to Matteo Comito or his nominees. On May 28, 1941 the license, which was formerly in the name of Mary Maloney, was transferred to said corporation. On June 14, 1941, Matteo Comito seems to have terminated his interest in the corporation, as appears from the fact that on said date the stock certificates standing in his name and the name of his nominees were endorsed by the holders of said certificates.

In the latter part of June 1941, Joseph LaGreca, a resident of the City of New York, entered into an agreement with Eugene Lamont "to take the place over." Apparently, in pursuance of said arrangement, the shares of stock which had been previously endorsed by Comito and his nominees were reissued on the books of the corporation in the names of Mary Maloney, John LaGressa and Linda LaGressa. The certificate in the name of Mary Maloney was placed in the physical possession of Joseph LaGreca. The shares issued to John LaGressa and Linda LaGressa were, in fact, owned by Joseph LaGreca, who operated the licensed business under the corporate license from the latter part of June 1941 until July 15, 1941, when he closed the licensed premises and removed the license certificate. No business has been conducted on the licensed premises since July 15, 1941.

The control exercised by Lamont satisfies me that he was the real owner of the business while it was operated in the name of Mary Maloney and the real owner of the shares of the corporation which had been issued in her name. Joseph LaGreca has admitted, in a statement given to investigators of this Department, that he was the true owner of the shares which had been issued in the name of Joseph LaGressa and Linda LaGressa. If this were all, I would suspend the license for the balance of its term in order to prevent the non-resident, Joseph LaGreca, from continuing operation of the licensed business in the corporate name.

It appears, however, that on August 20, 1941, Murray Raskin and William Shank, Jr. entered into a verbal agreement with Eugene Lamont and an attorney, who was the registered agent of the corporation and who also represented Joseph LaGreca, to purchase the shares of defendant corporation by the payment of a sum of money and the assumption of all the outstanding debts of the corporation; that, after they had paid the money to said attorney, they obtained from him all of the records of defendant corporation, including the certificates of stock standing in the names of Mary Maloney, John LaGressa and Linda LaGressa, endorsed by the respective owners of said certificates. That when they were told that an investigation of the affairs of the corporation was being conducted by this Department they consulted their own attorney, who advised them "not to operate under the corporate license until everything had been straightened out."

The books of defendant-licensee now show that all of the shares of the corporation are in the names of Murray Raskin and William Shank, Jr. and their respective wives. Raskin has testified under oath that no other persons are interested in said shares. I believe that Murray Raskin and William Shank, Jr. acted in good faith. They and their attorney have cooperated fully with this Department during the course of the investigation. I think that they are entitled to relief.

It has been represented by the present officers of defendant-corporation that Eugene Lamont, who holds a long term lease on the

licensed premises, has agreed to sublet the premises to the corporation. These officers have stated that if this arrangement is not satisfactory they can arrange to have the Lamont lease cancelled and obtain a new lease for the corporation from the owner of the premises. Because of Lamont's connection with this case, I shall insist that a new lease be obtained so that Lamont may no longer have any connection with the licensed premises. I shall give the corporation the privilege of applying to me to lift the suspension herein imposed upon proof that it has complied with this condition, but in no event before the expiration of ten days from the date of this order. It is further to be noted that the present holders of all of the stock of Malcolm Enterprises, Inc. have already paid a heavy penalty for the failure of their predecessors and of the corporation to observe the law in that the licensed premises have been closed since the 15th of July 1941.

Accordingly, it is, on this 10th day of December, 1941,

ORDERED, that Plenary Retail Consumption License C-166, heretofore issued to Malcolm Enterprises, Inc. by the Board of Alcoholic Beverage Control of the City of Paterson, be and the same is hereby suspended, effective immediately, for the balance of the fiscal year. Leave is hereby given to Malcolm Enterprises, Inc. to apply to me for an order lifting said suspension upon presenting proof that it has entered into a written lease with the owner of premises known as 226-240 McBride Avenue, Paterson, New Jersey, for a period of at least one year, but in no event will an order lifting the suspension be entered herein until the expiration of at least ten days from the effective date hereof.

*Alfred E. Dunsen*  
Commissioner.