

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

BULLETIN 516

JUNE 18, 1942.

1. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN  
PROOF, COLOR, ACID AND SOLID CONTENT - LICENSEE RESPONSIBLE  
FOR ACTS OF EMPLOYEES - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary )  
Proceedings against )

NATHAN WERNER,  
166 Washington Street,  
Newark, N. J., )

CONCLUSIONS  
AND  
ORDER

Holder of Plenary Retail Con- )  
sumption License C-316, issued by )  
the Municipal Board of Alcoholic )  
Beverage Control of the City of )  
Newark. )  
- - - - - )

Sidney Simandl, Esq., Attorney for Licensee.  
Abraham Merin, Esq., Attorney for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee entered a plea of not guilty to the charges of possessing illicit alcoholic beverages contrary to R.S. 33:1-50, and the refilling of a bottle of liquor with other than the original contents, contrary to R.S. 33:1-78. Both of these charges will be considered together.

At the hearing, an inspector of the Alcohol Tax Unit testified that, on December 8, 1941, he seized a one-quart bottle labeled "Four Roses Rye, a Blend of Straight Whiskies" on the premises of the licensee. A chemist of the Alcohol Tax Unit testified that he analyzed the contents of the seized bottle and found it varied in proof, color, acid and solid content from a genuine sample used for comparative purposes. His testimony further disclosed that the analysis showed the presence of artificial coloring and in the genuine sample there was no artificial coloring present.

The defendant admitted possession of the illicit alcoholic beverage and the refilling of the bottle as charged. In mitigation, however, he testified that he did not refill the bottle nor did he have any knowledge of the refilling until after the seizure. Subsequent to the seizure, his bartender (who is now in the Armed Forces of the country and could not be present at the hearing) told the licensee that he had, together with friends, drunk from the seized bottle of Four Roses and then refilled the bottle with "Golden Wedding Whiskey" so that the licensee would not detect the consumption made by him and his friends.

The seized liquor constitutes illicit alcoholic beverage and its mere possession was in violation of R.S. 33:1-50. See Re Haney, Bulletin 304, Item 13.

Licensees are strictly accountable for their liquor stock and it is their responsibility to see that their employees

do not tamper with the stock in any way or manner, for any purpose. See Re Moritko, Bulletin 490, Item 4; Re 12 East Park Street Tavern, Inc., Bulletin 481, Item 9. Further, as master of the establishment, the licensee is responsible for the acts of his employees irrespective of his personal innocence. See Re Jacobs, Bulletin 316, Item 8. I must conclude that the defendant-licensee is guilty as charged.

Since this is the defendant's first conviction and there are no aggravating or other attendant circumstances warranting a more substantial penalty, the license will, in line with my past decisions, be suspended for a period of ten days. See Re Moritko, supra, and other cases there cited.

Accordingly, it is, on this 8th day of June, 1942,

ORDERED that Plenary Retail Consumption License C-316, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark, to Nathan Werner for premises at 166 Washington Street, Newark, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 A.M. June 15, 1942, and terminating at 3:00 A.M. June 25, 1942.

ALFRED E. DRISCOLL,  
Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALES OF ALCOHOLIC BEVERAGES  
BELOW FAIR TRADE MINIMUM - THIRD AND FOURTH SIMILAR OFFENSE -  
LICENSE REVOKED.

In the Matter of Disciplinary )  
Proceedings against )

THEODORE P. JANULIS, )  
381 Springfield Ave., )  
Newark, N. J., )

CONCLUSIONS  
AND  
ORDER

Holder of Plenary Retail Dis- )  
tribution License D-9, issued by )  
Municipal Board of Alcoholic )  
Beverage Control of the City of )  
Newark. )

- - - - - )

Samuel Poleshuck, Esq., Attorney for Defendant-Licensee.  
Richard E. Silberman, Esq., Attorney for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

Charges were served upon the licensee alleging that:

"1. On or about March 11, 1941, without first having obtained a special permit so to do, you sold one gallon bottle of Aroma DiCalifornia (Vino d'Uva Naturale) Red Grape Wine below the minimum consumer price published in Bulletin 440 of this Department, in violation of Rule 6 of State Regulations No. 30.

"2. On or about September 8, 1941, without having first obtained a special permit so to do, you sold one quart bottle of National's Eagle Blended Whiskey below the

minimum consumer price published in Bulletin 416 of this Department, in violation of Rule 6 of State Regulations No. 30."

Licensee admits that, on March 11, 1941, he sold a one-gallon bottle of Aroma Di California (Vino d'Uva Naturale) Red Grape Wine to investigators of this Department for the sum of \$1.39. He admits also that, on September 8, 1941, his clerk, who was then in charge of his licensed premises, sold one quart bottle of National's Eagle Blended Whiskey to investigators of this Department for the sum of \$2.25.

As to the item mentioned in the first charge, it appears that this wine was listed in Bulletin 416, effective July 22, 1940, at \$1.39 per gallon, and that the price of this item was changed by Bulletin 440, effective January 21, 1941 to \$1.40 per gallon. The testimony given by the clerk employed by Mr. Janulis is that, when Bulletin 440 was received, he changed the prices on all other items therein contained but neglected to change the price tag on the wine in question from \$1.39 to \$1.40. When the investigators visited the licensed premises on March 11, 1941, they saw a price tag containing the figures \$1.39 on the bottle of Aroma Di California wine displayed in the window and purchased the item at that price. While it appears that this is a slow moving item and that it was sold only one cent below the proper price, it nevertheless constituted a violation of the regulations. Hence, I find licensee guilty as to the first charge.

As to the item mentioned in the second charge, it appears that National's Eagle Blended Whiskey was listed in Bulletin 416, effective July 22, 1940, at \$2.35 per quart. Licensee testified that, for some time prior to the alleged violation, this item, as displayed on his shelf, contained a price tag with figures of \$2.25. His clerk testified that two or three weeks before the alleged violation, he placed a tag containing the figures \$2.25 upon a bottle of this item displayed in the window of the licensed premises and said that he copied the price from the tag displayed upon the shelf. When the investigators of this Department visited the licensed premises on September 8, 1941, they saw the prices displayed in the window and on the shelf and purchased the item for \$2.25, which was ten cents less than the minimum consumer price. They were told by the clerk who made the sale that the price that day was \$2.25 but that the price on the following day would be \$2.35. It appears from Bulletin 476, effective September 9, 1941, that the price of this item was restated at \$2.35 per quart, which was the same price which had been fixed in Bulletin 416, effective July 22, 1940. It thus appears that this item was sold at ten cents below the minimum consumer price which had been in effect for more than thirteen months. I, therefore, find the licensee guilty as to Charge 2.

As to penalty: Defendant testified at the hearing that he conducts a grocery and delicatessen store and that approximately fifty per cent. of his business consists of the sale of alcoholic beverages; that it will be practically impossible for him to carry on his other business if his license is revoked or suspended for a substantial period of time. It is interesting to note that a petition for clemency, filed after a previous suspension and based in part upon the same allegations, was denied in Re Janulis, Bulletin 442, Item 5. In a brief submitted in his behalf, it is argued that defendant should be given a minimum suspension because there is no evidence of "under-counter chiseling" in this case.

I cannot, however, overlook the previous record of this licensee. In August and September of 1936 and again in December of 1937 he was warned against the use of over-sized price signs in his windows; in March 1937 he was found guilty of permitting lottery slips on his licensed premises and received a suspended sentence; in January 1940 he pleaded guilty to a Fair Trade violation, whereupon his license was suspended for five days (Re Janulis, Bulletin 376, Item 10); in January 1941 he pleaded guilty to a second Fair Trade violation and also pleaded guilty to a charge of permitting over-sized price signs in his show window, whereupon his license was suspended for thirty days. See Re Janulis, Bulletin 438, Item 3.

While I am not unmindful of the licensee's position or his obligation to his family as recited in his brief, his record leaves me no other alternative than to revoke his license. Cf. Re Tarlow, Bulletin 375, Item 1. On four separate occasions, he has admittedly violated the same provision of the statute. It may be possible for a licensee to violate the statute on one occasion as a result of a mistake. Four separate violations can hardly be characterized in this fashion. The record indicates that the licensee has either been unable or unwilling to assume the full responsibility that accompanies the privilege which was conferred upon him by his license. He appears to have learned little from his previous suspensions. By his activities he has competed unfairly with the great majority of law-abiding licensees in the City of Newark who are entitled to our protection.

Accordingly, it is, on this 6th day of June, 1942,

ORDERED that plenary retail distribution license D-9, heretofore issued to Theodore P. Janulis, for premises at 381 Springfield Avenue, Newark, by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL,  
Commissioner.

3. DISCRIMINATORY PRICES AND DISCOUNTS - STATE REGULATIONS NO. 34 - PRICE LISTING OF EXCLUSIVE BRANDS REQUIRED - PRIVATE BRAND DEFINED AND DISTINGUISHED FROM EXCLUSIVE BRAND.

June 8, 1942.

Fleming & McCaig, Inc.

Gentlemen:

I have before me your letter of May 25th.

A brand sold to a single retailer in New Jersey and to other retailers elsewhere may be the New Jersey retailer's exclusive brand in New Jersey but it is not a private brand. A private brand is one sold only to a single retailer by a manufacturer, either direct or through a wholesaler.

Since X brand may be sold "exclusively" to Retailer A today, Retailer B tomorrow and Retailer C the next day, or to Retailer A this minute, Retailer B the next minute and Retailer C the minute after next, exclusive brands must be price listed, even though private brands need not be, pursuant to State Regulations No. 34.

Very truly yours,

ALFRED E. DRISCOLL,  
Commissioner.

4. ACTIVITY REPORT FOR MAY, 1942

TO: Alfred E. Driscoll, Commissioner

<u>ARRESTS:</u>	Licensees and employees - - - -	3	Bootleggers - - - - -	13
	Total number of persons arrested- - - - -			16
<u>SEIZURES:</u>	Still - 1 to 50 gallons daily capacity - - - - -	5		
	50 gallons and more daily capacity- - - - -	1		
	Total number of stills seized - - - - -			6
	Mash - gallons- - - - -			710
	Motor vehicles - Trucks - - - - -	1		
	Passenger cars - - - - -	0		
	Total number of motor vehicles seized - - - - -			1
	Beverage alcohol - gallons- - - - -	0		
	Brewed malt alcoholic beverages (beer, ale, etc.) - gallons - - - -			63.10
	Wine - gallons- - - - -			265.75
	Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons - -			0.75
<u>RETAIL LICENSEES:</u>	Number of premises in which were found:			
	Illicit (bootleg) liquor - 3 "Fronts" (concealed ownership) -	3		
	Gambling devices - - - - - 2 Improper beer tap markers- - - -	1		
	Prohibited signs - - - - - 0 Stock disposal permits necessary -	1		
	Unqualified employees- - -50 Other types of violations- - - -	7		
	Total number of premises where violations were found- - - - -			62
	Total number of premises inspected- - - - -			1,357
	Total number of unqualified employees found - - - - -			66
	Total number of bottles gauged- - - - -			11,163
<u>STATE LICENSEES:</u>	Premises inspected- - - - -			27
	License applications investigated - - - - -			36
<u>COMPLAINTS:</u>	Investigated, reviewed and closed - - - - -			314
	Investigation assigned, not yet completed - - - - -			541
<u>LABORATORY:</u>	Analyses made - - - - -			140
	"Shake-up" cases (alcohol, water and artificial coloring) - - - -			20
	Liquor found to be not genuine as labeled - - - - -			11
<u>IDENTIFICATION BUREAU:</u>	Criminal fingerprint identifications made - - - - -			36
	Persons fingerprinted for non-criminal purposes - - - - -			137
	Identification contacts with other enforcement agencies - - - -			138
	Motor vehicle identifications via N. J. State Police Teletype - -			11
<u>DISCIPLINARY PROCEEDINGS:</u>	Cases transmitted to municipalities - - - - -			35
	Cases instituted at Department- - - - -			36
<u>HEARINGS HELD AT DEPARTMENT:</u>	Appeals- - - - -	7	Tax revocations- - - - -	10
	Disciplinary proceedings - - - - -	40	Seizures - - - - -	8
	Eligibility- - - - -	12		
	Total number of hearings held - - - - -			77
<u>PERMITS ISSUED:</u>	Unqualified employees - - - - -			456
	Solicitors- - - - -			92
	Social affairs- - - - -			192
	Home manufacture of wine- - - - -			1
	Disposal of alcoholic beverages - - - - -			66
	Miscellaneous permits - - - - -			148
	Total number of permits issued- - - - -			955

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

5. DISCIPLINARY PROCEEDINGS - EXERCISING THE RIGHTS AND PRIVILEGES OF THE LICENSE BY NON-LICENSEE - FALSE ANSWER IN LICENSE APPLICATION - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF - CHARGES DISMISSED.

In the Matter of Disciplinary  
Proceedings against

ANTHONY PISANKO,  
T/a LAWRENCE BAR AND RESTAURANT,  
1920 Brunswick Avenue,  
Lawrence Township (Mercer County), N.J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License )  
C-1, issued by the Township Committee of the )  
Township of Lawrence (Mercer County), New )  
Jersey. )  
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John B. Wick, Esq. and Eugene T. Urbaniak, Esq., Attorneys  
for Licensee.

G. George Addonizio, Esq., Attorney for State Department of  
Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant was served with charges alleging that:

"1. From October 4, 1939 to September 10, 1941, you exercised, attempted to exercise, and held yourself out as authorized to exercise the rights and privileges of Plenary Retail Consumption License C-1, issued by the Township Committee of Lawrence Township (Mercer County) to Theresa Budny for premises 1920 Brunswick Avenue, Lawrence Township (Mercer County), in violation of R. S. 33:1-26.

"2. In the application for license dated June 24, 1940, filed with the Township Committee of the Township of Lawrence (Mercer County), upon which Plenary Retail Consumption License C-1 for the year 1940-41 was granted to Theresa Budny, your predecessor in interest, the said Theresa Budny, 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? -- If so, state names, addresses and interest of such individuals....' evaded and suppressed a material fact by answering in said application 'Yes - Anthony Pisanko is landlord and has restaurant concession', whereas in truth and fact, you, Anthony Pisanko, were also the real and beneficial owner of the licensed business; said evasion and suppression of material fact being in violation of R. S. 33:1-25.

"3. In the application for license dated June 19, 1941 filed with the Township Committee of the Township of Lawrence (Mercer County), upon which Plenary Retail Consumption License C-1 for the year 1941-42 was granted to Theresa Budny, your predecessor in interest, the said Theresa Budny 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 you, Anthony Pisanko, were the real and beneficial owner of said licensed business and had such an interest; said false statement being in violation of R. S. 33:1-25.

"4. From October 4, 1939 to September 10, 1941, Theresa Budny, your predecessor in interest, knowingly aided and abetted you, then being a non-licensee, to exercise the rights and privileges of said Plenary Retail Consumption C-1, then held by said Theresa Budny contrary to R.S. 33:1-26, in violation of R. S. 33:1-52."

To these charges the licensee pleaded not guilty.

The evidence against defendant consists of a statement obtained from him by investigators of this Department. The statement, which is dated August 5, 1941, reads in part as follows:

"I am the sole owner of the real estate, property, equipment, food stock and liquors contained therein, situated at & known as #1920 Brunswick Ave., Lawrence Township, Mercer Co., N. J. The License C-1 for these premises is in the name of Theresa Budny & it has been in her name since October 1939. The reason I had to have the liquor license in Theresa Budny's name was because Lawrence Township has had a law under which I would have to be a resident of the Township for one year & as I have my home in Trenton I could not qualify as a licensee. When I had to take this property over from a bad tenant I did not know there was such a law & I was going to take the license in my own name, but when I learned about the law I got Mrs. Budny to do me the favor of allowing me to use her name."

There is no doubt that Anthony Pisanko was the sole owner of the real estate, property, equipment and food stock. For some time prior to September 10, 1941, he conducted the restaurant concession on the licensed premises. Re Budny, Bulletin 409, Item 7. On September 10, 1941 the liquor license for the premises in question was transferred from Theresa M. Budny to defendant, who is now fully qualified, and he has operated under said license since that time.

The question to be decided herein, however, is whether, between October 4, 1939 and September 10, 1941, Anthony Pisanko exercised the rights and privileges of the license, which was then in the name of Theresa M. Budny. Cf. Re Rubin, Bulletin 458, Item 8. Upon the answer to that question depends the truth or falsity of the other charges.

At the hearing herein defendant denied telling the investigators that he was the owner of the liquors on the licensed premises. He testified that prior to September 10, 1941 Theresa M. Budny paid the help and paid for the liquor. She testified that she bought the liquor. This testimony is corroborated by bank statements and approximately six hundred cancelled checks, which were offered in evidence, covering the bank account of Theresa M. Budny from June 1940 to September 1941. Both interested parties testified that, during that period, they kept separate accounts for the liquor and restaurant business.

At the hearing herein Theresa M. Budny, who is the wife of defendant's nephew, and who had stated to the investigators that Pisanko's statement was true, also testified as follows:

"Q. As far as the conduct of the business under this license, you were the sole judge of the way it should be conducted?

A. Yes. I took charge of the girls to see they conducted themselves in a proper manner so that no one under twenty-one was served and I had full charge of the instructions to the bartender and most of the time I was there.

Q. Did Mr. Pisanko tell you how to operate the bar?

A. No, he knew nothing about the bar business.  
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THE HEARER: On June 24, 1940, did Pisanko or anyone else have any interest aside from the fact Pisanko was the landlord?

THE WITNESS: Only with the money I owed him.

THE HEARER: And on June 19, 1941 did you consider that the license was yours at that time?

THE WITNESS: I considered it was mine."

The defendant testified that since 1918 he has been actively engaged in the butcher business in Trenton and spent "maybe an hour a day" at the licensed premises. There is nothing in the record to show that defendant herein received any profits from the operation of the licensed business during the time the license was held by Mrs. Budny.

This is a difficult case to decide because it involves persons who are related to each other and also involves a licensee and concessionaire on the licensed premises. It may well be that Pisanko would have taken the license in his own name in October 1939 had he then been eligible, but that is beside the point. Considering all the evidence, I conclude that the Department has not sustained the burden of proof in showing that defendant exercised the privileges of the license while it was in the name of Theresa M. Budny.

Accordingly, it is, on this 10th day of June, 1942,

ORDERED, that the charges herein be and the same are hereby dismissed.

ALFRED E. DRISCOLL,  
Commissioner.



6. MORAL TURPITUDE - CRIME OF ASSAULT AND BATTERY WITH INTENT TO RAPE INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS LAST PAST - CONVINCING EVIDENCE OF REFORMATION - 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. 210. )  
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BY THE COMMISSIONER:

In 1928 petitioner was convicted of assault and battery with intent to rape and sentenced to serve eighteen months in the county penitentiary. In 1931 he was convicted of loitering and sentenced to serve three months in the county penitentiary. In 1932 he was convicted of being a disorderly person and sentenced to serve ninety days in the penitentiary. Later in 1932 he was again charged with rape, but the grand jury dismissed the complaint.

Petitioner's first conviction was the outgrowth of the attempted rape of a twenty-one year old girl by petitioner and four companions. This crime plainly involved the element of moral turpitude. The loitering charge arose from his interference with an officer, and the disorderly conduct charge followed a row which he created at a carnival. He was about twenty-five years of age at the time of his last offense.

Petitioner has been in the contracting business for about fifteen years and has earned and is still earning a substantial livelihood. He married in 1933 and his wife is now part owner of a tavern. He seeks removal of his disqualification, pursuant to R. S. 33:1-31.2, in order to assist her at such tavern and also, perhaps, eventually to go into that business himself. According to the records of this Department, there have been no complaints concerning the conduct of that tavern.

While petitioner's record as a young man is very unsavory, he appears to have mended his ways after his marriage. The police records of the municipality wherein he resides show no pending investigations or complaints against him. Thus, petitioner has apparently had a clear record for about ten years.

As character witnesses he produced an attorney of this State, who is a member of the City Council of the municipality where the petitioner resides; a clerk employed in the county Hall of Records, and a coal dealer, who have known the petitioner for nine, twenty-five and twenty years, respectively. They all testified that petitioner is regarded in the community as law-abiding, well behaved and of good character.

I therefore conclude that petitioner has been law-abiding for at least five years last past, has reformed, and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 10th day of June, 1942,

ORDERED, that the petitioner's statutory disqualification because of any 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.

7. DISCIPLINARY PROCEEDINGS - FAILURE TO DISCLOSE MATERIAL FACTS IN APPLICATION FOR SOLICITOR'S PERMIT, IN VIOLATION OF R.S. 33:1-25 - SIMULTANEOUS EMPLOYMENT BY MANUFACTURER AND RETAIL LICENSEE, IN VIOLATION OF R. S. 33:1-43 - PERMIT SUSPENDED FOR BALANCE OF TERM - UPON PROOF OF DISCONTINUANCE OF EMPLOYMENT BY RETAILER, SUSPENSION WILL BE LIFTED AFTER EXPIRATION OF TWO DAYS FROM EFFECTIVE DATE.

In the Matter of Disciplinary )  
Proceedings against )

PHILIP WINBURN BIARD,  
172 William Street,  
East Orange, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Solicitor's Permit  
No. 648 heretofore issued by )  
the State Commissioner of )  
Alcoholic Beverage Control. )  
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Philip Winburn Biard, Defendant-Permittee, Pro Se.  
Richard E. Silberman, Esq., Attorney for State Department of  
Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant, holder of a solicitor's permit, pleads not guilty to the following charges:

- (1) That in his permit application he only partially disclosed his record of employment for the preceding five years, in violation of R. S. 33:1-25.
- (2) That he has been working simultaneously for both a manufacturer and a retailer of alcoholic beverages in this State, in violation of R. S. 33:1-43.

The defendant readily admits all the facts in the case but contends that they do not constitute any violation.

As to (1): In his application the defendant, when asked for his "complete record of employment" for the prior five years, disclosed, inter alia, that he has been working as a solicitor for G. Krueger Brewing Company (a New Jersey brewery licensee) since June 3, 1940, but failed to disclose that he has also been working since that time as a musician at week-ends at the retail liquor establishment of Frank Daileys Meadowbrook, Inc., t/a The Meadowbrook, in Cedar Grove.

The defendant explains that he intended to hide nothing by this omission; that his regular employment during the time in question has been his work as solicitor for the brewery (earning \$40.00 or \$42.00 a week), while his work week-ends as a musician at The Meadowbrook (earning \$16.00 per week) has been merely a "side-line"; that

he thought the question in the application asked only for his regular employment during the past five years and not any collateral employment during that time.

Although I am convinced of the defendant's sincerity, the fact remains that he did not give a proper disclosure. His employment as a musician at The Meadowbrook, while occurring only at week-ends, was nevertheless of a steady and continuous nature and thus should clearly have been disclosed in the defendant's application in answer to the plain question asking for his "entire record of employment" for the prior five years.

Hence I find the defendant guilty on charge (1).

As to (2): The Alcoholic Beverage Law (R. S. 33:1-43) expressly prohibits anyone from being interested in any way whatsoever in both the wholesaling or manufacturing and the retailing of alcoholic beverages in this State. The purpose of this broad provision is to strongly insulate the retail trade from any encroachment by the manufacturer or wholesaler, and thus to guarantee against the occurrence of the so-called "tied house" (i.e., where the manufacturer or wholesaler obtains influence or control over the retailer). For a discussion of the "tied house", and the late Commissioner's belief that it caused many of the evils leading to Prohibition, see Re Princeton Municipal Improvement, Inc., Bulletin 255, Item 1.

Under such thorough-going provision, a solicitor or other employee of a wholesaler or manufacturer may not at the same time likewise work at a retail liquor establishment. See Re City Brewing Corp., Bulletin 159, Item 5; Re Talmadge, Bulletin 176, Item 8; Re Cohen, Bulletin 390, Item 8. Cf. Re Preparation of Retailers' Tax Reports, Bulletin 474, Item 11. While the violation is more palpable when the solicitor is working at the retail place handling alcoholic beverages, a violation nevertheless exists even where, as here, the solicitor is working as a part-time musician for the retailer. The Alcoholic Beverage Law recognizes the wisdom of the old adage that no man may serve two masters, one being a retailer and the other a wholesaler or manufacturer.

Hence I find the defendant guilty on charge (2).

As to penalty: Since I am satisfied that the defendant acted in good faith when filling out his said application and when carrying on his dual employment, and since this case is one of first impression as to whether a solicitor may work for a retailer in some capacity other than handling or dealing with a liquor, a three-day suspension of the defendant's permit, less one day for his frank disclosure of all the facts, leaving a net of two, is adequate penalty.

However, since the defendant may not be permitted to continue his dual employment for the brewery and the retailer, I shall suspend his permit for the balance of the term, but with leave to lift such suspension after two days thereof have been served on receiving a certification from the defendant that he has discontinued his employment with the retailer. If I receive no such certification, I shall take it that the defendant prefers to relinquish his employment for the brewery and hence shall keep the permit under suspension for the balance of the term.

Accordingly, it is, on this 10th day of June, 1942,

ORDERED, that Solicitor's Permit No. 648, heretofore issued to Philip Winburn Biard by the State Commissioner of Alcoholic

Beverage Control, be and the same is hereby suspended for the balance of its term, effective at 12:01 A. M. June 22, 1942; and it is further

ORDERED, that if the defendant certifies that he has actually discontinued his employment with the aforesaid retailer, the suspension of the defendant's permit may be lifted; provided, however, that in no event shall such suspension be lifted prior to the expiration of two (2) days from the effective date of the suspension.

ALFRED E. DRISCOLL,  
Commissioner.

8. DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS LAST PAST 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. 220.  
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BY THE COMMISSIONER:

In Eligibility Case No. 270, Bulletin 314, Item 3, petitioner was declared ineligible to be employed by a liquor licensee because of his conviction, in March 1937, of the crime of perjury, committed in a naturalization proceeding.

Petitioner now seeks removal of his disqualification, pursuant to R. S. 33:1-31.2, upon claim that he has led a law-abiding life since his conviction.

Petitioner testified that he has been in the grape business since 1935, purchasing carload lots of grapes in California and marketing them at retail at a railroad yard in New York; that this is a seasonable business, and that during the balance of the year he purchases wine barrels for resale and also does occasional trucking jobs. He says that if his disqualification is lifted, he will seek additional work in the wine industry in New Jersey.

A member of the New Jersey Bar, in practice for nineteen years, testified that he has represented the petitioner on various occasions during the past five years, and that he has found him to be honest and reliable. Two of the petitioner's neighbors, who have known him for six and ten years respectively, testified that he is actually in the grape business and that he is regarded in the community as an honest and good man.

The police record of the municipality wherein petitioner resides shows no pending investigations or complaints against petitioner. The conviction in question appears to be petitioner's only criminal offense.

I therefore conclude that petitioner has been law-abiding for at least five years last past, and that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 10th day of June, 1942,

ORDERED, that petitioner's statutory disqualification because of the conviction 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.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - DELIBERATE VIOLATION - SECOND SIMILAR OFFENSE - 25 DAYS' SUSPENSION.

In the Matter of Disciplinary )  
Proceedings against )

SPRINGFIELD WINE & LIQUOR CO., )  
90 Springfield Avenue, )  
Newark, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Distribu- )  
tion License D-168, issued by the )  
Municipal Board of Alcoholic )  
Beverage Control of the City of )  
Newark. )  
- - - - - )

Samuel Poleshuck, Esq., Attorney for Defendant-Licensee.  
G. George Addonizio, Esq., Attorney for State Department of  
Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleads guilty to the charge of having sold liquor at its store below the established Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

The facts are that, on January 22, 1942, Mrs. Gertrude Wax, a stockholder in the defendant corporation, acting as saleslady, sold a quart of "Old Mr. Boston Rocking Chair Blended Whiskey" to an investigator of this Department for \$2.25 although the then existing Fair Trade price for such item was \$2.45. See Bulletin 480.

Samuel Schwartz, the managing president of the defendant corporation, claims that this was a wholly unwitting violation; that Mrs. Wax, in charging the investigator only \$2.25 for this item, innocently relied upon a marking of \$2.25 on several of these bottles on the shelf as being the permissible resale price. Schwartz further explains that he put this marking on the bottles some time ago and that inadvertently they were permitted to remain after the Fair Trade price for this item had, in October 1941, been fixed at \$2.45.

I can place no stock in this claim. When the sale was completed and the investigator and his fellow agent who accompanied him identified themselves, Mrs. Wax, so far as appears, made no claim that she had been misled by any price marking on any of the bottles of this item. Likewise, Schwartz, when giving a statement soon after the sale in question, made no mention of any such marking or that Mrs. Wax had relied thereon. No such marking appeared on the bottle actually sold, nor, according to the investigator who made the purchase, was there any price marking on any of the bottles of this item.

Schwartz's story has all the earmarks of after-invented fiction. The only proper inference is that Mrs. Wax made the sale in question in full knowledge of the fact that she was selling below the permissible price and hence violating the Fair Trade regulations of this Department.

I note that this is the defendant's second conviction for a Fair Trade violation, its license having been suspended by this Department in August 1940 for its first offense. See Re Springfield Wine & Liquor Co., Inc., Bulletin 421, Item 2. In line with my present policy in the instance of a second and deliberate Fair Trade violation, the defendant's license will, for his present offense, be suspended for twenty-five days. See Re Hoboken Wine & Liquor Co., Inc., Bulletin 514, Item 1; Re Holz Bros., Bulletin 514, Item 2. Because of the defendant's attempt to sell me a "cock and bull" story on the question whether this violation was innocent, nothing will be remitted for the guilty plea. Cf. Re DeRusso, Bulletin 510, Item 11; Re Mehok, Bulletin 513, Item 9.

Since there are not sufficient days left in the current licensing year (which ends June 30) for the twenty-five day suspension to be served, I shall suspend the defendant's present license for the balance of its term and shall direct that no further license be issued to the defendant or for the premises in question until a full period of twenty-five days has elapsed.

Accordingly, it is, on this 13th day of June, 1942,

ORDERED, that Plenary Retail Distribution License D-168, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Springfield Wine & Liquor Co. for 90 Springfield Avenue, Newark, be and the same is hereby suspended for the balance of its term, effective June 17, 1942, at 3:00 A.M.; and it is further

ORDERED, that no further license be issued to this licensee or for the premises in question prior to July 12, 1942.

ALFRED E. DRISCOLL,  
Commissioner.

10. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BY CLUB  
 LICENSEE TO PERSONS NOT MEMBERS OR GUESTS - ISOLATED CASE - 5 DAYS'  
 SUSPENSION, LESS 2 FOR GUILTY PLEA.

In the Matter of Disciplinary )  
 Proceedings against )

WESTWOOD LODGE B. P. O. )  
 ELKS NO. 1562, )  
 523 Kinderkamack Road, )  
 Westwood, N. J., )

CONCLUSIONS  
 AND ORDER

Holder of Club License CB-96, )  
 issued by the New Jersey State )  
 Commissioner of Alcoholic )  
 Beverage Control. )  
 - - - - - )

William F. Wood, Esq., Attorney for Department of  
 Alcoholic Beverage Control.  
 Garrett A. Storms, Exalted Ruler, for Defendant-Licensee.

BY THE COMMISSIONER:

The defendant club licensee has pleaded guilty to a charge of having sold alcoholic beverages to persons who were not bona fide members or bona fide guests of members, in violation of Rule 5 of State Regulations No. 7.

The file in the case shows that on May 1, 1942 investigators of this Department, who were neither members of the club nor guests of members, visited the licensed premises. At the entrance door tickets costing \$1.10 each were being sold, apparently to the public at large, for an affair then being held, and the investigators purchased two tickets. They then went to the barroom in the basement, where a large number of men were being served alcoholic beverages. The investigators purchased two drinks of liquor without any inquiry being made of them as to whether they were members of the club or guests of any members. They then proceeded to a hall on the second floor, where a floor show was being presented. There, beer was served indiscriminately and without charge to the audience seated at tables.

The licensee's explanation is that the affair was arranged only for members and their guests and that it was assumed persons of this character would be the only ones to attend; that the reason that the tickets were sold at the door was because many of the members could not tell in advance whether they would be able to attend, hence the tickets were made available upon their entrance; and that the ticket seller was instructed not to sell them to any one he did not recognize either as a member or a guest of a member.

While these may be extenuating circumstances, it cannot, of course, alter the fact that no adequate provision was made to prevent the sale and service of alcoholic beverages to persons who were not members or guests of members. The licensee could easily have safeguarded itself by obtaining a special one-day permit to cover the affair. Indeed, the licensee states that it had previously obtained such a permit for another affair; that it had failed to obtain a permit for the instant affair through an oversight, in that subsequent to April 1st it did not have a steward who normally would have attended to this detail.

This is the licensee's first violation of record.

Since this appears to be an isolated instance and not one where sales to non-members were being made in the course of the club's daily activities, I will impose the minimum penalty heretofore given in similar cases for a first offense rather than the more drastic penalty, which I have indicated will be given in future cases to those club licensees who have or persist in such a violation. See Re Democratic Club of the 11th Ward, Bulletin 495, Item 5.

Hence the minimum penalty of five days for this type of violation, with remission of two days because of the plea, will be imposed. Cf. Re Trenton Lodge No. 164, Bulletin 491, Item 6.

Accordingly, it is, on this 11th day of June, 1942,

ORDERED, that Club License CB-96, heretofore issued to Westwood Lodge B. P. O. Elks No. 1562 by the New Jersey State Commissioner of Alcoholic Beverage Control for premises at 523 Kinderkamack Road, Westwood, be and the same is hereby suspended for a period of three (3) days, commencing June 16, 1942, at 1:00 A.M. and terminating June 19, 1942, at 1:00 A. M.

*Alfred E. Enisall*  
Commissioner.

CHECKED BY 