

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

BULLETIN 638

NOVEMBER 1, 1944.

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN PROOF, SOLIDS AND ACIDS - LICENSE SUSPENDED FOR PERIOD OF 10 DAYS.
2. ELIGIBILITY - FACTS EXAMINED - CRIME OF ASSAULT AND BATTERY FOUND TO INVOLVE MORAL TURPITUDE - APPLICANT ADVISED THAT HE IS NOT ELIGIBLE TO HOLD LIQUOR LICENSE OR TO BE EMPLOYED BY LICENSEE IN THIS STATE.
3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR PERIOD OF 15 DAYS.
4. DISCIPLINARY PROCEEDINGS - REFILLING BEER BOTTLE WITH BEER FOR OFF-PREMISES CONSUMPTION IN VIOLATION OF R. S. 33:1-78 - LICENSE SUSPENDED FOR PERIOD OF 10 DAYS, LESS 5 FOR GUILTY PLEA.
5. AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - LICENSEE PAID \$100.00 FINE - LICENSE ORDERED SUSPENDED FOR 8 DAYS BY MUNICIPAL ISSUING AUTHORITY - APPLICATION TO LIFT GRANTED UPON EXPIRATION OF 32 DAYS FROM EFFECTIVE DATE OF AUTOMATIC SUSPENSION.
6. DISCIPLINARY PROCEEDINGS - CHARGE OF SELLING ALCOHOLIC BEVERAGES TO MINORS IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 DISMISSED - DEPARTMENT FAILED TO SUSTAIN BURDEN OF PROOF.
7. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN APPLICATION FOR LICENSE CONCEALING MATERIAL FACTS - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO A BONA FIDE TRANSFEREE TO PETITION TO LIFT SUSPENSION UPON EXPIRATION OF 40 DAYS.
8. DISCIPLINARY PROCEEDINGS - CHARGE OF SELLING ALCOHOLIC BEVERAGES TO MINORS IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 DISMISSED - DEPARTMENT FAILED TO SUSTAIN BURDEN OF PROOF.
9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - PREVIOUS RECORD - LICENSE SUSPENDED FOR PERIOD OF 30 DAYS.
10. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES IN ORIGINAL CONTAINERS FOR OFF-PREMISES CONSUMPTION DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - PREVIOUS RECORD - LICENSE SUSPENDED FOR PERIOD OF 20 DAYS, LESS 5 FOR GUILTY PLEA.
11. GAMBLING DEVICES - LICENSEES PROHIBITED FROM HAVING PIN BALL MACHINES ON LICENSED PREMISES BY RULE 7 OF STATE REGULATIONS NO. 20 - THE LATTER NOT CHANGED BY RECENT COURT DECISIONS.
12. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A MINOR IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR PERIOD OF 10 DAYS, LESS 5 FOR GUILTY PLEA.

DEPARTMENT OF VETERANS AFFAIRS
CIVIL SERVICE CENTER

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

BULLETIN 638 NOVEMBER 1, 1944

1. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN PROOF,
SOLIDS AND ACIDS - LICENSE SUSPENDED FOR PERIOD OF 10 DAYS.

In the Matter of Disciplinary)
Proceedings against)

SURF COLONY CORP.
Ocean Avenue, between 6th and 7th)
Avenues, Ortley Beach)
Dover Township, P.O. Box 225)
Seaside Heights, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-9, issued by the Township)
Committee of the Township of Dover.)
- - - - -)

Defendant-Licensee, by Wilford C. Hering, Secretary.
Harry Castelbaum, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Licensee has pleaded non vult to a charge alleging that, on July 28, 1944, it possessed two 4/5 quart bottles labeled "Old Grand Dad Kentucky Straight Bourbon Whiskey Bottled in Bond", which contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

On the date in question Federal agents tested a number of bottles at the premises of the licensee and found two of them unsatisfactory. Subsequent analysis by a Federal chemist showed that the contents of these bottles differed substantially from an authentic sample in proof and amounts of solids and acids.

The licensee admits that the two bottles in question did not come up to proof and offers as an only explanation that the bottles were tampered with by some of its employees. As previously indicated in numerous cases, a licensee cannot hide behind the cloak of its employees. The license is his as well as the business and it is his duty to see that the business is conducted in accordance with the law. Re Oprandy, Bulletin 600, Item 5.

I shall suspend defendant's license for a period of ten days.

Accordingly, it is, on this 19th day of October, 1944,

ORDERED, that Plenary Retail Consumption License C-9, issued by the Township Committee of the Township of Dover to Surf Colony Corp. for premises on Ocean Avenue, between 6th and 7th Avenues, Ortley Beach, Dover Township, P. O. Box 225, Seaside Heights, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A. M. October 24, 1944, and terminating at 2:00 A. M. November 3, 1944.

ALFRED E. DRISCOLL
Commissioner.

2. ELIGIBILITY - FACTS EXAMINED - CRIME OF ASSAULT AND BATTERY FOUND TO INVOLVE MORAL TURPITUDE - APPLICANT ADVISED THAT HE IS NOT ELIGIBLE TO HOLD LIQUOR LICENSE OR TO BE EMPLOYED BY LICENSEE IN THIS STATE.

October 13, 1944.

Re: Case No. 545

Applicant herein seeks a determination as to whether or not he is eligible to be associated in any capacity with the alcoholic beverage industry.

The applicant's record includes a conviction on September 29, 1932 of the crime of atrocious assault and battery, as a result of which he was placed on probation by a Judge of a Court of Special Sessions for an indefinite period. Again, on June 25, 1934, applicant was convicted of adultery and was sentenced to eighteen months in a county penitentiary. The latter sentence was subsequently suspended and in its stead applicant was placed on probation for a period of three years. On February 24, 1943 applicant was placed on probation as a result of a conviction of the crime of simple assault and battery.

The conviction of atrocious assault and battery, according to police records, followed an altercation between applicant and another man during which applicant struck the other person with a piece of an iron pipe.

The crime of atrocious assault and battery, wherein a weapon is used likely to cause serious injury, is one that involves the element of moral turpitude. Cf. Re Case No. 375, Bulletin 529, Item 6. It is therefore unnecessary to determine whether or not such element is present in the other offenses of which applicant has been convicted.

Inasmuch as applicant has been convicted of a crime involving moral turpitude, it is recommended that he be advised that he is not eligible to hold a liquor license or to be employed by a liquor licensee in this state.

Clarence E. Kremer
Attorney.

APPROVED:
ALFRED E. DRISCOLL
Commissioner.

3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against)

ELSWORTH J. ROBBINS)
T/a DOCK DINER)
State Highway No. 4)
Lacey Township)
P. O. Forked River, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-102, issued by the Township Committee of Lacey Township.)

No appearance on behalf of licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were preferred against the defendant herein alleging that on August 8, 1944 he sold, served and delivered or permitted and suffered the service and delivery of alcoholic beverages to two minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

Defendant-licensee failed to appear on the day of trial set forth in the charges served upon him. A technical plea of not guilty was entered by the Hearer and the matter proceeded to trial.

Two youths, seventeen and eighteen years of age, respectively, testified that on August 8, 1944 they were sold and served beer by a man and woman who were subsequently identified as agents of the defendant-licensee. It appears from the written statement of the licensee that he was not on the premises at the time of the alleged violation. A written statement made by a woman who was tending bar on the evening in question admitted making a sale of two glasses of beer to the minors. However, the statement by the man who was helping tend bar on August 8, 1944 showed that he remembered the youths being on the premises but denied making any sale or service of alcoholic beverages to them. Even though personally innocent of the violations, defendant is held strictly accountable for violations of the Alcoholic Beverage Law committed on the licensed premises by his agents or employees. Hence, I find the defendant guilty.

The defendant has no previous adjudicated record. However, because of the youthfulness of one of the minors in the instant case, I shall suspend the license for a period of fifteen days.

Accordingly, it is, on this 20th day of October, 1944,

ORDERED, that Plenary Retail Consumption License C-102, heretofore issued by the Township Committee of Lacey Township to Elsworth J. Robbins, t/a Dock Diner, for premises State Highway No. 4, Lacey Township, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 A. M. October 25, 1944, and terminating at 2:00 A. M. November 9, 1944.

ALFRED E. DRISCOLL
Commissioner.

4. DISCIPLINARY PROCEEDINGS - REFILLING BEER BOTTLE WITH BEER FOR OFF-PREMISES CONSUMPTION IN VIOLATION OF R. S. 33:1-78 - LICENSE SUSPENDED FOR PERIOD OF 10 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against GEORGE H. HATHAWAY T/a HATHAWAY LODGE Route 25 Five Points Cinnaminson Township P. O. Palmyra, RFD, N.J., Holder of Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Cinnaminson.

CONCLUSIONS AND ORDER

Emory S. Kates, Esq., Attorney for Defendant-Licensee. Milton H. Cooper, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads non vult to bottling alcoholic beverages for sale without the necessary license so to do, in violation of R. S. 33:1-78.

The departmental file discloses that, on August 29, 1944, an investigator of the Department of Alcoholic Beverage Control observed the defendant refill two quart beer bottles with beer from the tap. These bottles were purchased by two customers, respectively, and taken from the licensed premises. Defendant admitted refilling the bottles with beer and making the sale but professed ignorance of the fact that he had violated the Alcoholic Beverage Law. Nine empty unlabeled quart beer bottles were found by the investigator on the rear bar of the licensed premises.

The licensee would have avoided his present predicament if he had not sought to circumvent Rule 1 of State Regulations No. 38, prohibiting the sale of alcoholic beverages in original containers for off-premises consumption after 10:00 P. M. on week days and throughout Sunday and thereby run afoul of R. S. 33:1-78 prohibiting bottling.

This case is clearly distinguishable from those involving "rushing the growler", limited to "open type containers" such as pails and pitchers.*

* On May 5, 1934, Commissioner Burnett issued the well known "growler" ruling, which is still in effect. Re Simandl, Bulletin 27, Item 2. Therein it was ruled that a plenary retail consumption licensee may sell draught beer for consumption off the licensed premises by the pail, or in similar containers and cartons. It followed by inference that the filling of such containers with beer would not be construed as bottling. Commissioner Burnett's ruling was not abrogated by the adoption of Rule 1 of State Regulations No. 38. The "growler" ruling is presently strictly limited, however, to open type containers. Other than as noted herein, all other sales for off-premises consumption must be confined strictly to original containers. See Re Samalonis, Bulletin 623, Item 13.

This is defendant's first adjudicated offense. Therefore, under the circumstances, I shall suspend the license for a period of ten days, with remission of five days for the plea of non vult entered herein, or a net suspension of five days. Re Perry Rice, t/a Perry's Wayside Inn, Bulletin 559, Item 5; Re Kirby, Bulletin 560, Item 5.

Accordingly, it is, on this 23rd day of October, 1944,

ORDERED, that Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Cinnaminson to George H. Hathaway, t/a Hathaway Lodge, for premises on Route 25 Five Points, Cinnaminson Township, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 A. M. October 30, 1944, and terminating at 2:00 A. M. November 4, 1944.

ALFRED E. DRISCOLL
Commissioner.

- 5. AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - LICENSEE PAID \$100.00 FINE - LICENSE ORDERED SUSPENDED FOR 8 DAYS BY MUNICIPAL ISSUING AUTHORITY - APPLICATION TO LIFT GRANTED UPON EXPIRATION OF 32 DAYS FROM EFFECTIVE DATE OF AUTOMATIC SUSPENSION.

In the Matter of the Petition)
of)
JAMES GRINNAN)
T/a GRINNAN'S)
302 River Road)
Clifton, N. J.,)
to Lift the Automatic Suspension)
of Plenary Retail Consumption)
License C-119, issued by the)
Municipal Council of the City of)
Clifton.)
- - - - -)

ON PETITION
CONCLUSIONS AND ORDER

James J. Murner, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

It appears from the petition filed herein that the licensee entered a plea of non vult before the Hon. Joseph A. Delaney, Judge of the Court of Common Pleas of the County of Passaic, sitting as a Court of Special Sessions of said county, to two indictments wherein it was alleged that he had sold alcoholic beverages to minors and that, on October 6, 1944, as a result thereof he was fined \$100.00.

It further appears that the Municipal Council of the City of Clifton suspended his said license for a period of eight days, effective May 17, 1944, at 7:00 A.M., after licensee, in disciplinary proceedings instituted by said Board, appeared but failed to present any defense to the charge of selling alcoholic beverages to minors.

The records of the Department of Alcoholic Beverage Control show that the indictment in the criminal proceedings and the charges

in the disciplinary proceedings were based upon the same facts. Because of his conviction in the criminal proceedings, petitioner's license has been automatically suspended since October 6, 1944. R. S. 33:1-31.1.

The petition filed herein prays that the automatic suspension may be lifted. This case concerns the sales of beer for consumption on the premises to two groups. One group of six boys consisted of five who were seventeen years old and one who was twenty; the other group of seven boys consisted of one who was sixteen, four who were seventeen, and two who were eighteen. One of the eighteen year old boys was a member of the armed forces of this country.

It was readily apparent to the agents of this Department who witnessed the sales that the boys were minors, and the licensee, in conversation about the boys, referred to them as "kids." Licensee's sheer disregard of the law, in callously allowing so many minors, all readily discernible as such, to be served alcoholic beverages at his premises, warranted a much heavier penalty than that inflicted by the Municipal Council.

Despite the eight-day penalty imposed by the Municipal Council of the local issuing authority, I shall not lift the automatic suspension at this time. The purpose of the automatic suspension is to insure that when a licensee is convicted in a criminal court there is swift and sure penalty against his license. In view of such purpose, it has been the policy of this Department to lift said suspension when and only when the license has been suspended for what appears, in view of all the facts, to be a sufficiently penalizing length of time. Re Solitare, Bulletin 538, Item 4.

Petitioner has no previous record, but even if full weight be given to that fact the penalty imposed by the local Board appears to be totally inadequate. Cf. Re Woerner, Bulletin 610, Item 9. I shall not lift the automatic suspension under the facts disclosed herein until thirty-two days have elapsed from the date on which it became effective. The eight-day suspension imposed by the local issuing authority plus the withholding of relief herein for thirty-two days would appear to be a proper and adequate punishment for the violations mentioned herein.

Accordingly, it is, on this 16th day of October, 1944,

ORDERED, that the automatic suspension of the license aforesaid be lifted, effective at 7:00 A. M. November 7, 1944. The license will be returned to the licensee at that time.

ALFRED E. DRISCOLL
Commissioner.

6. DISCIPLINARY PROCEEDINGS - CHARGE OF SELLING ALCOHOLIC BEVERAGES TO MINORS IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 DISMISSED - DEPARTMENT FAILED TO SUSTAIN BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against)

BENJAMIN SALMANOWITZ)
T/a CENTRAL HOTEL)
122 Railroad Avenue)
Hightstown, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-6 issued by the Common Council of the Borough of Hightstown.)
-----)

Sidney Simandl, Esq., Attorney for Defendant.
Gaylord R. Hawkins, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to charges alleging that on September 2, 1944, he sold alcoholic beverages to Amos ----, a minor, and that on September 2, 1944, and on divers dates prior thereto, he sold alcoholic beverages to Oscar ----, a minor; all in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

This case was instituted as the result of statements made by the alleged minors after they had been separately arrested as disorderly persons on September 2, 1944 by members of the Hightstown Police Department.

Both of the alleged minors are transient workers and, at the time of the alleged violation, had migrated from their homes in the South and were temporarily living at a potato-pickers' camp near Hightstown, New Jersey. Efforts made by agents of the Department to locate Amos ---- for the purpose of serving upon him a subpoena to testify at the hearing herein were unsuccessful. Amos ---- did not appear at the hearing and the Department was unable to produce competent testimony to sustain the charge concerning sale to him.

It appears from the testimony of Oscar ----, who was subpoenaed and testified at the hearing, that on the evening of September 2, 1944 he was arrested while engaged in a fight with another individual on one of the streets of the Borough of Hightstown. After his arrest, Oscar ---- signed a statement wherein he said that, earlier in the afternoon of the same day, he had purchased three glasses of beer from the bartender in defendant's premises and that he had previously purchased beer "a good many times" in the licensed premises from defendant himself. The testimony of Oscar given at the hearing was substantially the same as that set forth in his written statement. There is no corroboration of his testimony. Oscar admitted that he had been previously convicted of vagrancy.

At the hearing defendant testified that Oscar had frequently visited his premises during the period of a few weeks prior to September 2, 1944. Defendant testified that he had never sold any alcoholic beverages to Oscar at any time and that he had consistently refused to do so because the young man, on the occasion of his first visit to the licensed premises, would not sign a card stating that he was of the age of twenty-one years or over. Defendant also testified

that Oscar was intoxicated when he refused to sell to him on the morning of September 2, 1944. The bartender, who was a temporary employee and who is not presently employed by defendant, testified that he never served any alcoholic beverages to Oscar. Defendant and defendant's wife testified that the bartender did not sell anything to this young man while they were in the licensed premises on September 2, 1944, and that one of them was present at all times during the bartender's employment on that date.

Defendant has no prior adjudicated record. This case involves totally inconsistent stories told by the alleged minor and the bartender, the licensee and his wife. The burden of proof to establish guilt of the defendant rests with the Department. After considering all the evidence, I conclude that the Department has not sustained the burden of proof as to the alleged sales to Oscar, and hence I shall dismiss the charges.

Accordingly, it is, on this 24th day of October, 1944,

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

ALFRED E. DRISCOLL
Commissioner.

7. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN APPLICATION FOR LICENSE CONCEALING MATERIAL FACTS - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO A BONA FIDE TRANSFEREE TO PETITION TO LIFT SUSPENSION UPON EXPIRATION OF 40 DAYS.

In the Matter of Disciplinary Proceedings against
VETERANS PARK TAVERN, INC.
604 Avenue A
Bayonne, N. J.,
Holder of Plenary Retail Consumption License C-125, issued by the Board of Commissioners of the City of Bayonne.

CONCLUSIONS
AND ORDER

Gross & Gross, Esqs., by Benjamin Gross, Esq., Attorneys for Defendant-Licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleads guilty to the following charges:

"1. In your application, filed with the Board of Commissioners of the City of Bayonne and upon which you obtained your current plenary retail consumption license, you, after listing the following as the stockholders in your corporation - Anthony Pirozzi one share, Harry Weisoly one share and Frances Pirozzi eighteen shares, falsely stated 'No' in answer to Question 24 which asks: 'Has any stockholder of the applicant corporation any beneficial interest, directly or indirectly, in the stock of any other stockholder of the applicant corporation?', whereas in truth and fact Anthony Pirozzi and Harry Weisoly were the real and beneficial owners of all the stock listed in Frances Pirozzi's name; such false statement being in violation of R. S. 33:1-25.

"2. In your aforesaid application, you, although revealing that, in 1938 and 1940, licenses in which Harry Weisoly had an interest were suspended for two days and ten days respectively, suppressed the material fact that, in 1943, the license of Bayonne Broadway Tap Room, Inc., in which Harry Weisoly was President-Treasurer and 80% stockholder, was suspended for 10 days after being found guilty of selling alcoholic beverages to an intoxicated person; such suppression being in violation of R. S. 33:1-25."

Licensee requested an opportunity to appear personally before me and to present by oral argument extenuating circumstances. This opportunity was afforded and the attorney for the licensee appeared.

The explanation offered to the first charge is that Weisoly had no money to pay for his share of the business; that the stock was put in the name of Frances Pirozzi, to be held by her as collateral to secure the payment by Weisoly for his interest, and that Anthony Pirozzi's stock was also put in the name of Frances Pirozzi to evidence the good faith and confidence of Anthony Pirozzi in Weisoly.

As to the second charge, it is alleged that the information set forth in the application was taken from a prior application filled out by Weisoly, and that the party filling out the application was in error. Furthermore, that there was no intention to suppress any required information.

Whether or not the explanations are true, the fact remains that Weisoly and Pirozzi each had a one-half interest in this business and that the disclosure of the complete record of the former would have revealed three occasions wherein a license in which he had had an interest was suspended for a violation of the Alcoholic Beverage Law or the Regulations. The disclosure of this record in the application for the instant license might have resulted in the refusal of the local issuing authority to issue a license to the defendant.

Counsel for the defendant states that it is the intention of the licensee to apply for a transfer of the license to Anthony Pirozzi as a sole owner; that if this application is granted, the corporation will be dissolved; and that Weisoly will have no further connection with the licensed business. The question of the transfer is a matter for the local issuing authority to determine. I assume that it will carefully study the record of the various parties before reaching a decision on the proposed application. In the meantime, the improper "front" situation cannot be permitted to continue.

In view of the fact that the illegal situation is still in existence, I will suspend the license for the balance of its term. I shall grant permission to a bona fide and properly qualified transferee of the license to make application to me by verified petition to lift the suspension herein imposed provided that in no event will such petition be granted until at least forty days have expired from the effective date of this suspension.

Accordingly, it is, on this 24th day of October, 1944,

ORDERED, that Plenary Retail Consumption License C-125, issued by the Board of Commissioners of the City of Bayonne to Veterans Park Tavern, Inc. for premises 604 Avenue A, Bayonne, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. November 1, 1944; and it is further

ORDERED, that upon a correction of the existing unlawful situation by a bona fide transfer, application may be made to me by Anthony Pirozzi for an order lifting said suspension, provided, however, that such suspension shall not be lifted prior to the expiration of forty days from the effective date of the suspension herein imposed.

ALFRED E. DRISCOLL
Commissioner.

8. DISCIPLINARY PROCEEDINGS - CHARGE OF SELLING ALCOHOLIC BEVERAGES TO MINORS IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 DISMISSED - DEPARTMENT FAILED TO SUSTAIN BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against
MICHAEL BASH
180-2 South Broad Street
Trenton, N. J.,
Holder of Plenary Retail Consumption License C-138, issued by the Board of Commissioners of the City of Trenton.

CONCLUSIONS
AND ORDER

J. Richard Kafes, Esq., Attorney for Defendant-Licensee.
Milton H. Cooper, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleads not guilty to the following charges:

- "1. On the night of July 3, 1944, you sold alcoholic beverages at your licensed premises to Private Eugene --- and Corporal James ---, 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 Private Eugene --- and Corporal James ---, 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 two minors, age twenty years and nineteen years, respectively, testified that on the evening in question they entered the licensee's place of business and sat at a booth in the rear. They state they ordered two beers and a pint of Carstairs Whiskey, for which they were charged \$4.00, from a waitress whom they subsequently identified as Mildred Monaghan; that after they consumed these drinks they again ordered two beers and an additional pint of Carstairs which was served to them by the same waitress. They testified further that on neither of the occasions were any inquiries made as to their ages.

On cross-examination they admitted they had been at the licensed premises on three or four other occasions and had been served by the same waitress, but "would not be sure" that Michael Bash, the proprietor, was behind the bar on the evening in question, although they said that the person who was there looked like him.

Agents of the Department of Alcoholic Beverage Control testified that they subsequently accompanied the two minors to Bash's tavern for the purpose of identification of the premises and the person making the service. The agents stated that they received from the two minors the general location of the place, that they drove them along Broad Street, and that when they arrived in the vicinity of the licensed premises the minors pointed the place out to them. Thereupon they entered the place and found the proprietor and his wife. No identification was made of the proprietor or of his wife, but when the waitress, Mildred Monaghan, entered a few minutes later, she was identified by the two minors as the one who had made the service to them.

Further testimony of the two minors developed the fact that they were picked up by the local police at about 11:10 P. M. on the evening in question, both in an intoxicated condition, after having provoked an argument with a civilian. Both minors testified that at the time they left the licensee's place of business they were sober and had nothing more to drink prior to being picked up by the local police, although both were intoxicated at the time of their being apprehended.

The licensee and Mildred Monaghan, the waitress who was alleged to have made the sales, both entered complete denials of the entire transaction. The licensee testified that he was at the bar the entire evening of July 3rd and that the two minors did not enter his place of business at any time during the evening. Furthermore, he testified that for more than a year past he has made no sales of bottled goods and that he had a sign posted over the bar during the past year announcing that he did not sell bottled goods. He further testified that on the evening in question and for some time prior thereto, he had no Carstairs pints in stock and that on the occasion of the visit of the agents to the premises he opened each drawer in front of the agents to show them that he had no Carstairs pints on hand. The waitress, Mildred Monaghan, testified that the two minors were not in the place; that she did not serve them, and corroborated the testimony of the licensee that no bottled goods were sold on the premises either for consumption on or off the place, and furthermore denied that any pints of Carstairs were sold to the two minors on the evening in question.

Three other witnesses, patrons of the place, testified that they were in the licensed premises on the evening in question at approximately the same time the two minors testified they were there. One witness testified he attempted to purchase a bottle of Sherry from the proprietor on that evening and that the proprietor would not sell it to him and pointed to the sign over the bar announcing that no sales of bottled goods were made. He further testified that to the best of his knowledge he did not recall seeing the two minors in the place or being served.

Another witness testified he sat opposite the booth where the two minors testified they sat and at no time while he was there did he see two soldiers occupying the booth. He also corroborated the failure of his companion to purchase a bottle of Sherry from the proprietor and stated that he noticed the sign with reference to the sale of bottled goods over the bar.

The third witness testified that he was in the licensed premises with his wife and that they sat at a booth in the rear. He testified that he noticed the sign announcing no sale of bottled

goods and had seen it on several occasions before, although apparently he had left the licensed premises on the evening in question prior to the time the two minors said they entered the place.

The whole question hinges on the veracity of the witnesses. The burden of proof rests upon the Department. I believe the testimony of the three credible witnesses who were patrons in the premises. Unquestionably the two minors obtained somewhere enough alcoholic beverages to bring about such a state of intoxication that they were apprehended as disorderly by the Trenton police and turned over to the military authorities. Undoubtedly, their statements as to where they were served were made after their apprehension when they had regained their sobriety.

It is quite possible that the minors were mistaken as to the location of the place where they were served. This is supported by the fact that they were unable to direct the agents accurately to the place where they allegedly had been served and could only give the general neighborhood. This is further borne out by the fact that they informed the agents of this Department that they were served on Broad Street, which, as everyone knows, is a long street in Trenton. After getting this information it was necessary for the agents to drive them along Broad Street until they came to a location which seemed familiar to the minors. The only thing positive about their identification is that of the waitress, and her denial of serving the minors is as positive as the identification of her by the minors.

In Re Levine, Bulletin 617, Item 6, I found the licensee guilty of sale to minors where there was a positive identification on one side and an equally positive denial on the other, but in that case I pointed out that the two minors involved were residents of Trenton and apparently had been life-long residents of Trenton and know the territory where they alleged they had been served. I felt in that case that the two minors were sufficiently familiar with the neighborhood as not to be mistaken as to the location of the licensed premises.

In this case, however, these facts do not exist. The two minors in question are in the service, come from another State, and, according to their own admissions, have been only a few times in Trenton. It is quite possible that they were mistaken as to the location of the licensed premises where they were served. Furthermore, their condition when arrested was such as to warrant the conclusion that they had only a hazy recollection of what actually transpired on the evening of July 3, 1944.

I am unable to find that the Department has borne the burden of proof in this matter, and hence shall dismiss the charges herein.

Accordingly, it is, on this 25th day of October, 1944,

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

ALFRED E. DRISCOLL
Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - PREVIOUS RECORD - LICENSE SUSPENDED FOR PERIOD OF 30 DAYS.

In the Matter of Disciplinary Proceedings against)

NICK ALDARELLI)
T/a NICKS' INN)
1027-29-31 Springwood Avenue)
Asbury Park, N. J.,)

CONCLUSIONS AND ORDER.

Holder of Plenary Retail Consumption License C-13, issued by the City Council of the City of Asbury Park.)
-----)

Anshelewitz & Barr, Esqs., Attorneys for Defendant-Licensee.
Milton H. Cooper, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to charges alleging that he sold, served and delivered alcoholic beverages to minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

On September 23, 1944 two ABC agents observed one of the defendant's employees serve a glass of beer to each of three young sailors who were each nineteen years old.

If this were the defendant's first violation, I would normally suspend the license for ten days. However, the defendant has an imposing previous record. On December 24, 1936 his license was automatically suspended after he had been criminally convicted for possession of "refilled" liquor. See R. S. 33:1-31.1. This suspension was not lifted until March 8, 1937, at which time the premises had been closed for about two and a half months. Bulletin 166, Item 11. In March 1942 he was penalized for a period of ten days by the local authorities upon his guilty plea to charges of permitting prostitutes on his premises, selling to intoxicated persons and permitting brawls on his premises. This latter penalty was woefully inadequate in view of the serious nature of the charges, and the prior conviction.

This background of infractions requires the imposition of a substantial suspension for the instant violation. If the initial conviction were of more recent origin, or had the present offense appeared to be of an aggravated character, I would have given serious consideration to an outright revocation of the license. Under all of the circumstances, however, I shall allow the defendant a further opportunity to demonstrate that he is cognizant of the grave responsibilities which must be borne by a liquor licensee. Any future violation may well be convincing evidence to the contrary.

The license will be suspended for a period of thirty days.

Accordingly, it is, on this 25th day of October, 1944,

ORDERED, that Plenary Retail Consumption License C-13, issued by the City Council of the City of Asbury Park to Nick Aldarelli, t/a Nick's Inn, for premises 1027-29-31 Springwood Avenue, Asbury Park, be and the same is hereby suspended for a period of thirty (30) days, commencing at 2:00 A. M. October 30, 1944 and terminating at 2:00 A. M. November 29, 1944.

ALFRED E. DRISCOLL
Commissioner.

10. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES IN ORIGINAL CONTAINERS FOR OFF-PREMISES CONSUMPTION DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - PREVIOUS RECORD - LICENSE SUSPENDED FOR PERIOD OF 20 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

ADAM F. CHLODNICKI)
Green Pond Road)
Rockaway Township)
P. O. Rockaway, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Rockaway.)
-----)

Adam F. Chlodnicki, Defendant-Licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleaded non vult to a charge alleging that on Friday, May 12, 1944, he sold a bottle of wine for consumption off the licensed premises, in violation of Rule 1 of State Regulations No. 38.

Licensee admits that the sale was made by his wife, who was at the time in charge of the licensed premises. This, of course, warrants no mitigation. A licensee, when apprehended for violation of the law, may not hide behind the cloak of his employees. Re Kneller, Bulletin 49, Item 4. I find the licensee guilty of the charge as made.

The usual penalty for violations of this type since the rule first became effective has been a suspension of the license for a period of fifteen days. Re Gattuso, Bulletin 587, Item 1. However, in this case it appears that licensee has a prior record, having been found guilty by the local issuing authority in 1938 of selling to minors and employing an ineligible bartender. In view of all the circumstances and the former record, I shall suspend the license for a period of twenty days and remit five days thereof because of the plea.

Accordingly, it is, on this 26th day of October, 1944,

ORDERED, that plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Rockaway to Adam F. Chlodnicki for premises on Green Pond Road, Rockaway Township, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 1:00 A. M. November 1, 1944, and terminating at 1:00 A. M. November 16, 1944.

ALFRED E. DRISCOLL
Commissioner.

11. GAMBLING DEVICES - LICENSEES PROHIBITED FROM HAVING PIN BALL MACHINES ON LICENSED PREMISES BY RULE 7 OF STATE REGULATIONS NO. 20 - THE LATTER NOT CHANGED BY RECENT COURT DECISIONS.

October 26, 1944

Henry L. Strehl, Secretary
Fair Lawn Licensed Beverage Dealers Association
Paterson, New Jersey.

Dear Mr. Strehl:

This is the first opportunity I have had to acknowledge receipt of your recent letter.

Rule 7 of State Regulations No. 20 provides as follows:

"No licensee shall engage in or allow, permit or suffer any pool-selling, book-making or any playing for money at faro, roulette, rouge et noir or any unlawful game or gambling of any kind, or any device or apparatus designed for any such purpose, or any machine or device commonly known as bagatelle or pin ball machine, on or about the licensed premises."

You will note that the rule specifically prohibits licensees from having pin ball machines on their licensed premises. Until such time as Rule 7 of State Regulations No. 20 is amended or repealed, it will be enforced.

On March 9, 1942, following the decisions of the Supreme Court, in Hunter v. Teaneck, 128 N. J. L. 164, and Stafford v. Garrett, 128 N. J. L. 623, I stated that it was my "opinion that the existing language of Rules 7 and 8 of State Regulations No. 20 was adequate to prohibit the possession of pin ball and bagatelle machines on licensed premises." Nonetheless, in view of the decisions of the Supreme Court just referred to and in order to prevent any misunderstanding, I amended Rule 7 to specifically mention and ban pin ball machines.

Thereafter, the Department was asked whether or not Rule 7 of State Regulations No. 20 covered "Western Major League Baseball Machines", "Miniature Pool Tables", "Skee-Ballete Machines", "Genco Play Ball", "Chicago Coin Hockey" and "Evans Play Ball" machines, as well as a number of machines of similar type. None of the machines mentioned in this paragraph contained any mechanism awarding the player free games nor was any provision made for a pay-off. All of the machines appear to be amusement devices involving some skill. Accordingly, the Commissioner held that their presence on licensed premises was not prohibited by Rule 7 of State Regulations No. 20 or the decisions of the Supreme Court cited above. To this extent we appear to have anticipated the decision of the New Jersey Court of Errors and Appeals in Stirling Distributors, Inc. v. Keenan, 138 N. J. Eq 508. In the latter case, the court below said:

"A fair example of all the machines in question is the 'baseball machine', which presents on a table a miniature baseball field."

In its opinion, the Court of Errors and Appeals specifically noted that there was no provision for "free play nor prizes or a return of any money." The court, in its opinion, did not mention the case of Hunter v. Teaneck, supra.

At best, all of these machines and, in particular, the more common pin ball machine, when found on licensed premises, are attractive nuisances calculated to invite minors to visit places

where they do not belong. I see no present reason for encouraging the return of the pin ball machine to taverns. Therefore, it is not my present intention to amend Rule 7 of State Regulations No. 20 barring pin ball machines.

Accordingly, you should notify your members that licensees are not permitted to have pin ball machines on licensed premises. Rule 7 of State Regulations No. 20.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

12. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A MINOR IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR PERIOD OF 10 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

RUDOLF & KATHERINE WANKOW)
T/a PULASKI PARK TAVERN)
208 W. Main Street)
Bound Brook, N. J.,)

CONCLUSIONS
AND ORDER

-----)
Holders of Plenary Retail Consumption License C-8, issued by the)
Borough Council of the Borough of)
Bound Brook.)
-----)

Rudolf & Katherine Wankow, Pro Se.
Milton H. Cooper, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendants pleaded guilty to charges alleging that they sold, served and delivered alcoholic beverages to a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

On September 22, 1944 a twenty-year-old minor was served a glass of beer by the defendants' bartender.

Since this is the defendants' first offense, and the violation does not appear to be an aggravated one, I shall impose the usual penalty of ten days. Five days will be remitted for the guilty plea, leaving a net penalty of five days.

Accordingly, it is, on this 25th day of October, 1944,

ORDERED, that Plenary Retail Consumption License C-8, issued by the Borough Council of the Borough of Bound Brook to Rudolf & Katherine Wankow, t/a Pulaski Park Tavern, for premises 208 W. Main Street, Bound Brook, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 A. M. October 30, 1944 and terminating at 2:00 A. M. November 4, 1944.

Alfred E. Driscoll
Commissioner.