

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

BULLETIN 396

APRIL 12, 1940.

1. APPELLATE DECISIONS - MUZYKA v. RAHWAY.

STEPHEN MUZYKA,	)	
Appellant,	)	
-vs-	)	ON APPEAL
	)	CONCLUSIONS
MUNICIPAL BOARD OF ALCOHOLIC	)	
BEVERAGE CONTROL OF THE CITY	)	
OF RAHWAY,	)	
Respondent	)	
-----		

Richard B. Magner, Esq. and Joseph M. Feinberg, Esq.,  
Attorneys for the Appellant.  
Eugene F. Mainzer, Esq., Attorney for the Respondent.

Appellant appeals the revocation of his plenary retail consumption license C-23, issued for premises 1591 Main Street, Rahway, N. J.

Upon receipt of information that cross-complaints of assault and battery had been filed in the Rahway Police Court by Mary Muzyka, the wife of the licensee, and one Christopher Middleton, in which complaints it was alleged that on December 31, 1939 Mary struck Christopher with a club, inflicting a wound on his forehead and contusions of his eyes and the bridge of his nose, at the same time threatening his life; and that Christopher struck Mary with his fists, injuring the side of her head and knocking her to the floor; all of which was alleged to have occurred on the licensed premises, respondent on its own initiative instituted disciplinary proceedings against appellant, charging that he had permitted a disturbance and a fight at the licensed premises in violation of State Regulations 20, Rule 5.

At the hearing on appeal the entire case was tried de novo, in accordance with established practice. From the testimony it appears that Christopher visited the licensed premises at about 9:30 P.M. on December 30, 1939, stayed about an hour and got into an argument with Mary. She ordered him out and threatened to call the police, who arrived after he left and found everything in good order. Christopher returned around midnight. Asked for details of what happened, he testified: "I am not familiar with that instance. I was filled up pretty well. Went and got some stuff from a liquor store.....The second visit I don't know much about." Asked how many times Mary had hit him he answered that he didn't remember whether she hit him or not. He denied that he had struck Mary. The testimony having indicated that Christopher had no recollection of how or when he was injured, he was asked by the Hearer why he had made the complaint against Mary, to which he replied that he had done so on the advice of a lawyer; that he had sought to withdraw the complaint because he could find no witnesses to support his story "and so I figured I would be a chump up there with nothing to back me up."

Mary Muzyka, the alleged other participant in the disturbance, under examination by the Hearer testified that on the occasion of his second visit Christopher arrived with one Randolph, both with blood all over their hands; that he demanded to be served a drink but was refused; that he was ordered out; that it was on the occasion of his first visit that she was struck by Christopher but that on the second occasion no blows were struck, she merely taking Christopher by the arm and urging him toward the door; that she made her complaint on the advice of her attorney after she learned that complaint had been made against her.

That Christopher struck Mary one blow on the occasion of his first visit was corroborated by one witness. In addition, appellant produced a witness who saw Christopher at about 12:30 A.M. fighting with someone on the street a block and a half away from the licensed premises, toward which the fighters headed after they were separated.

It seems clear that the respondent properly instituted the proceedings on the basis of the allegations in the cross-complaints filed in the Police Court. However, the testimony given at the hearing herein shows that the patron was the aggressor and that the licensee's employee merely attempted to maintain order. The evidence falls short of establishing that the licensee is guilty as charged.

The action of the respondent in revoking appellant's license is therefore reversed.

D. FREDERICK BURNETT,  
Commissioner.

By: E. W. Garrett,  
Chief Deputy Commissioner.

Dated: April 3, 1940.

2. SEIZURES - CONFISCATION PROCEEDINGS - WINE RETURNED IF RETROACTIVE PERMIT OBTAINED.

In the Matter of the Seizure on )	Case 5652
December 20, 1939, of a quantity )	
of home-made wine at 69 Girard )	
Avenue, in the Township of )	CONCLUSIONS
Matawan, County of Monmouth and )	AND ORDER
State of New Jersey. )	
- - - - - )	

J. Frank Weigand, Esq., Attorney for Salvatore Fusco.  
Harry Castelbaum, Esq., Attorney for the Department of  
Alcoholic Beverage Control.

On December 20, 1939, Investigators of this Department visited Salvatore Fusco's home at 69 Girard Place, Matawan, following a complaint that he was selling alcoholic beverages without a license. In the cellar of the premises they discovered and seized approximately 351 gallons of home-made wine, manufactured by him in the fall of 1939, without a permit.

At the hearing held herein, no evidence was presented that Fusco, in fact, had made any sales of alcoholic beverages, and he strenuously denied that the complaint was justified.

He testified that he has lived on the premises for seventeen years and in the Township for thirty years; that he has been steadily employed by the New York and Long Branch Railroad as a section foreman since 1920; that he has never previously been arrested, has never sold any alcoholic beverages and that he manufactured the wine for personal consumption and was not aware that it was necessary for him to first obtain a permit to do so.

The evidence before me establishes that he manufactured and possessed home-made wine without a permit. Technically, the wine constitutes unlawful property, and is subject to forfeiture. However, in the absence of any evidence that the wine was sold, and in view of his clear record, I shall accept as true the testimony of Salvatore Fusco that he manufactured the wine for personal consumption and that he was ignorant of the law. Under similar circumstances, I have heretofore authorized the issuance of a special permit to store the wine for personal consumption. Re Seizure No. 5206, Bulletin 355, Item 6.

Accordingly, the wine will be returned upon condition that, on or before May 2, 1940, Salvatore Fusco applies for and obtains a special permit, the fee for which is hereby fixed at Ten Dollars, pays the costs incident to the seizure and storage of the wine and complies with whatever requirements may be imposed by the State Tax Department, Beverage Tax Division; otherwise, the wine will be destroyed.

D. FREDERICK BURNETT,  
Commissioner.

By: E. W. Garrett,  
Chief Deputy Commissioner.

Dated: April 2, 1940.

3. SEIZURES - CONFISCATION PROCEEDINGS - WINE MANUFACTURED BY  
BOARDERS - SPECIAL PERMIT.

In the Matter of the Seizure on	)	Case 5645
December 5, 1939 of thirty-four	)	
50-gallon barrels and one 30-gallon	)	ON HEARING
barrel of wine, and one 50-gallon	)	CONCLUSIONS AND ORDER
barrel of wine mash, at 75 Union	)	
Street, in the Borough of Carteret,	)	
County of Middlesex and State of	)	
New Jersey.	)	
- - - - -	)	

William D. Danberry, Esq., Attorney for Benito Delatorre, and  
others.  
Harry Castelbaum, Esq., Attorney for the State Department of  
Alcoholic Beverage Control.

On December 5, 1939, several investigators of this Department, in company with a Carteret police officer, seized the property referred to in Schedule "A" herein. The seizure was made because no permits as prescribed by R. S. 33:1-75 had been obtained for the manufacture of the wine. The seized property is, therefore unlawful property and should be forfeited unless all of the parties involved have acted in good faith and unknowingly violated the law. R. S. 33:1-66.

The wine was seized at 75 Union Street, Carteret, where Benito Delatorre resides with his wife and two children, and where he also conducts a boarding house. There he rents rooms to some twenty odd boarders and furnishes them with meals for \$6.00 or \$7.00 a week. Benito apparently served them with nothing harder than water and so they would purchase wine at a neighborhood liquor store for consumption with their meals. This, however, proved to be expensive and, besides, did not suit their taste.

In the Fall of 1939, seventeen boarders and Benito decided to pool \$40.00 apiece to purchase grapes and manufacture wine for consumption with their meals. They figured that this amount would yield each one about one hundred gallons. The grapes were purchased and the manufacture commenced. Before the wine was ready to be consumed, however, it was seized.

R. S. 33:1-75 provides for the issuance of special permits "authorizing the manufacture within homes, \*\*\* of wines in quantities of not more than two hundred gallons for personal consumption only." So far as Benito Delatorre is concerned, no reason appears why a permit to manufacture wine within the limitations of the above section would not have been issued to him had he applied for it prior to making the wine.

As to the seventeen boarders, question arises: May the house at 75 Union Street, Carteret, be considered their home within the meaning of R. S. 33:1-75? Most of them have lived there for several years. None of them have any other home. Their rooms are where all their personal belongings are kept and where they sleep. They have all their meals at the house. The fact that each lives in but one room is immaterial. Be it ever so humble, it is home to them.

I conclude, therefore, that each of the seventeen boarders would have been entitled, upon proper application, to a special permit for the manufacture of wine within the limitations of R. S. 33:1-75.

Benito Delatorre has resided in Carteret for seventeen years, during all of which time he has operated a boarding house. He ~~was~~ never before attempted to make wine. He has never been arrested. He swore that he did not know that a permit was necessary.

Several of the boarders appeared at the hearing and testified that they are employed at Carteret; that they had no knowledge that a permit was required to manufacture wine; and that they had each contributed \$40.00 towards the wine.

There was no evidence of any sale or of any deliberate attempt to violate the law.

I am satisfied that Benito Delatorre and the seventeen boarders acted in good faith and are guilty of only an unwitting violation and shall, therefore, return the seized property to them upon condition that on or before the 4th day of May, 1940, (1) Benito Delatorre and the seventeen boarders each applies for and obtains a special permit, costing \$5.00 each, to store the wine for personal consumption, (2) pays the costs incidental to the seizure and storage, and (3) complies with whatever requirements may be imposed by the State Tax Department, Beverage Tax Division; otherwise, the seized property will be retained for the

use of hospitals and State, County and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

D. FREDERICK BURNETT,  
Commissioner.

By: E. W. Garrett,  
Chief Deputy Commissioner.

Dated: April 4, 1940.

SCHEDULE "A"

- 33 - 50-gallon barrels of wine
- 1 - 30-gallon barrel of wine
- 1 - 50-gallon barrel of wine ( $\frac{1}{4}$  full)
- 1 - 50-gallon barrel of wine mash

4. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

March 29, 1940

Re: Case No. 315

On July 5, 1935, applicant was arrested at a gambling establishment where he was employed as a "sheet writer" (one who records betting odds on horse races), and charged with aiding and abetting in bookmaking on horse races. He pleaded guilty and was fined \$100.00.

He testified that his salary was \$25.00 per week and that he had no other financial interest whatsoever in the unlawful activities.

He further testified that he is by trade a steamfitter and, after this experience, he attempted to join the local steamfitter's union but was unsuccessful because its membership quota was exhausted. Not being "registered", he was unable to find gainful employment in that trade and remained without a job for many months thereafter. Because of his straitened financial circumstances, he was finally induced by his former employer to resume his duties as a "sheet writer", on the same salary basis.

On May 7, 1938, he was again arrested on a charge of aiding and abetting in bookmaking on horse races, and convicted, after jury trial, on July 15, 1938. The Prosecutor of the Pleas reports that:

"The State's case showed that \_\_\_\_\_ was hired by \_\_\_\_\_ in the business, and that he was present doing what was necessary about the premises in conducting the business; he was not the principal.

"The sentence of the Court was that he be confined to State's Prison for not less than one year nor more than one year and to pay a fine of \$1000, this being the minimum sentence. Our file shows that application was made for pardon, and our recommendation, as well as the Judge's recommendation, was for clemency in view of the fact that the sentence imposed, being the minimum mandatory sentence, was felt to be rather severe for \_\_\_\_\_'s offense."

On December 2, 1938, he was paroled by the Court of Pardons, and his fine was remitted.

A conviction resulting from commercialized gambling ordinarily involves moral turpitude. Re Case No. 239, Bulletin 305, Item 9. If applicant had been responsible for putting the unlawful activities into operation, or was a "lieutenant" intimately connected therewith, it would follow that he would be disqualified from employment in the liquor business. Cf. Case No. 283, Bulletin 337, Item 14. However, it appears that his role was merely that of a minor employee at a small weekly salary. Neither conviction, therefore, involves the element of moral turpitude. Re Case No. 295, Bulletin 351, Item 10; Re Case No. 296, Bulletin 353, Item 12.

Despite applicant's two convictions for the same type of offense, I do not believe that he is possessed of any inherent criminal tendencies or is "lacking in any regard for law and order". Cf. Case No. 314, Bulletin 393, Item 9. His record is otherwise clear, and he gave the impression of being a serious-minded young man of good character. I believe his statement that had he been able to find legitimate employment after his first conviction, he would not have gone back to work at the gambling establishment.

It is recommended that applicant be declared eligible to be employed by a liquor licensee in this State.

Samuel B. Helfand,  
Attorney.

APPROVED:

E. W. GARRETT,  
Chief Deputy Commissioner.

April 5, 1940.

5. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary )  
Proceedings against )

ORTHODOX CHRISSOS,  
465 Grove Street,  
Jersey City, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Distri- )  
bution License D-34, issued by )  
the Board of Commissioners of the )  
City of Jersey City. )  
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Orthodox Chrissos, Pro Se.

J. Garry Keely, Esq., Attorney for the State Department of  
Alcoholic Beverage Control.

The licensee has pleaded guilty to a charge of selling liquor at less than the Fair Trade price at the licensed premises on February 23, 1940, in violation of Rule 6 of State Regulations No. 30.

The usual penalty for this violation is ten days.

By entering this plea in ample time before the date fixed for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for five (5) days instead of ten (10) days.

Accordingly, it is, on this 5th day of April, 1940,

ORDERED, that Plenary Retail Distribution License D-34, heretofore issued to Orthodox Chrissos 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, effective April 10, 1940, at 2:00 A. M.

D. FREDERICK BURNETT,  
Commissioner.

By: E. W. Garrett,  
Chief Deputy Commissioner.

6. DISCIPLINARY PROCEEDINGS - WEST NEW YORK LICENSEE - SALES ON SUNDAYS - 3 DAYS ON GUILTY PLEA.

In the Matter of Disciplinary )  
Proceedings against )

JOSEPH DEISCHER, )  
767 Park Avenue, )  
West New York, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Distri- )  
bution License D-5, issued by )  
the Board of Commissioners of the )  
Town of West New York. )  
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J. Garry Keely, Esq., Attorney for the State Department of  
Alcoholic Beverage Control.  
John J. Meehan, Esq., Attorney for the Defendant-Licensee.

The licensee has pleaded guilty to a charge of conducting business in and upon the licensed premises on Sunday, February 25, 1940, in violation of the local regulation.

The usual penalty for this violation is five days.

By entering this plea in ample time before the time fixed for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for three (3) days instead of five (5) days.

Accordingly, it is, on this 6th day of April, 1940,

ORDERED, that Plenary Retail Distribution License D-5, heretofore issued to Joseph Deischer by the Board of Commissioners of the Town of West New York, be and the same is hereby suspended for a period of three (3) days, effective April 10, 1940, at 10:00 P.M.

D. FREDERICK BURNETT,  
Commissioner.

By: E. W. Garrett,  
Chief Deputy Commissioner.

7. SEIZURES - UNLAWFUL TRANSPORTATION - FEE FOR TRANSPORTATION  
LICENSE FORFEITED.

In the Matter of the Detention )	
of a Mack Truck and 498 cases )	
of Scotch Whiskey contained )	CONCLUSIONS
therein, from Hasman and Baxt, )	AND ORDER
Inc. )	
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On February 3, 1939, Hasman and Baxt, Inc. transported 498 cases of Scotch Whiskey in its Mack Truck, and attempted to deliver the whiskey to the licensed warehouse of Lackawanna Terminal Warehouses, Inc. at 629 Grove Street, Jersey City. There, investigators of this Department detained the truck and whiskey because the truck was not licensed to transport alcoholic beverages for delivery in New Jersey.

Although the company had no transportation license, it did hold a special permit authorizing it to "pick-up" alcoholic beverages from premises of a licensed New Jersey manufacturer, or export wholesaler, or public warehouses for delivery to points outside of New Jersey. The delivery to Lackawanna, however, was not within the terms of its special permit.

Hasman and Baxt, Inc. have been in the transportation business for about twenty-five years and its New Jersey liquor business (with three exceptions) has been confined to transportation from New Jersey steamship piers for delivery to points outside of New Jersey, as authorized by its "pick-up" permit.

The exceptions occurred on July 29, 1938, December 28, 1938, and the instance in question, when it transported alcoholic beverages, under its custom house license, in bond, from steamship piers in New York and delivered them at the Lackawanna Warehouse, a bonded warehouse, under the supervision and control of the United States Custom House authorities. Hasman and Baxt, Inc. alleges that it believed it was authorized to transport such beverages without any further license because they were being transported under governmental supervision. In this it was in error but it appears to have acted in good faith.

Heretofore, where a transporter unwittingly transported alcoholic beverages in this state without a license, the Commissioner has required such transporter to pay the full annual license fee for the year in which the violation occurred.

Following the seizure, Hasman and Baxt, Inc. applied for a transportation license for the fiscal year 1938-1939 and deposited a license fee of \$200.00. The transportation license was not issued pending completion of the application and the determination as to whether the company's statements concerning the extent of its business in New Jersey were correct. The company never completed its application. Its statements were subsequently confirmed by independent investigation conducted by this Department.

It is determined that the company did engage in unlicensed transportation and delivery of alcoholic beverages in New Jersey on the dates mentioned, and it must, therefore, pay the license fee for the full fiscal year 1938-1939, the period during which such deliveries were made.



Accordingly, it is ORDERED that the license fee of \$200.00 deposited by Hasman and Baxt, Inc. be forfeited.

D. FREDERICK BURNETT,  
Commissioner.

By: E. W. Garrett,  
Chief Deputy Commissioner.

Dated: April 6, 1940.

8. DISCIPLINARY PROCEEDINGS - CLUB ADMITTED TO BE FRONT FOR INDIVIDUALS- CLUB LICENSE CANCELLED.

In the Matter of Disciplinary )  
Proceedings and Proceedings to )  
Cancel or Revoke Club License )  
No. CB-2, issued to )

CONCLUSIONS  
AND ORDER

LINCOLN SOCIAL CLUB, )  
26 Valley Street, )  
Union Township, Union County, )  
P.O. Vauxhall, N. J., )

by the Township Committee of the )  
Township of Union. )  
- - - - - )

J. Garry Keely, Esq., Attorney for the State Department of  
Alcoholic Beverage Control.  
J. Leroy Jordan, Esq., Attorney for the Defendant-Licensee.

This matter comprises both a proceeding for the cancellation of defendant's club license and disciplinary proceedings.

Defendant was required to show cause why its license should not be cancelled or revoked upon the ground that its license was issued in violation of R. S. 33:1-12(5) in that defendant was not at the time a bona fide club as required by Rule 2 of State Regulations No. 7 and was operated for private gain. Disciplinary action was also instituted, grounded upon three charges, one of which alleged that since July 1, 1939 it knowingly aided and abetted Lloyd Davis and Pinkie Davis to exercise the rights and privileges of its club license.

By its duly authorized attorney, the licensee has entered a plea of guilty to all of the charges which have been preferred against it, in which plea it is stated specifically that defendant "cannot show cause" why the club license heretofore issued to it "should not be cancelled and declared null and void and all operations thereunder terminated."

It appearing that licensee is not a bona fide club but a mere "front" for the two individuals mentioned in the charges, the license will be cancelled.

Accordingly, it is, on this 6th day of April, 1940,

ORDERED, that Club License No. CB-2, heretofore issued to the Lincoln Social Club by the Township Committee of the Township of Union, County of Union, be and the same is hereby cancelled and declared null and void, effective immediately.

D. FREDERICK BURNETT,  
Commissioner.  
By: E. W. Garrett,  
Chief Deputy Commissioner.

## 9. AGE, RESIDENCE OR CITIZENSHIP PERMIT - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

April 9, 1940.

Re: Case No. 322

This proceeding is to determine whether applicant, an alien, should be granted an ARC permit, under R. S. 33:1-26, to work at a tavern in this State as a "clean-up" and handy man.

Investigation reveals that applicant has the following record of convictions:

- 1926 - two occasions of disorderly conduct; 2 days' imprisonment for first and 30 days for second.
- 1927 - assault and battery; fined \$1.00 and released on probation.
- 1928 - disorderly conduct; 60 days.
- 1929 - assault and battery (or disorderly conduct); 90 days, being released after 45.
- 1930 - assault and battery; suspended sentence.
- 1931 - assault and battery; 6 months, being released after 3.
- 1934 - assault and battery; 1 to 1½ years, apparently being released after 10 months.
- 1935 - disorderly conduct; 10 days.

Most, if not all, of the convictions for assault and battery were, apparently, instances where applicant had beaten his wife (with whom, so he states, he was continuously quarreling). On the 1934 occasion, when applicant was given his longest term of imprisonment, he apparently assaulted her on the street and cut her face with a knife.

The convictions for disorderly conduct were, apparently, similar instances where applicant beat his wife or else occasions of his being drunk and disorderly.

In addition to the above record, applicant was, in 1932, found guilty of non-support of his wife and children, and ordered to make weekly payments for such support. He was thereafter brought into court on some thirty occasions for failing to comply with this order, being, in punishment, imprisoned in 1937 for five months and again in 1938 for six months.

In 1938 the local authorities attempted to have applicant deported as an undesirable alien but were informed that he was not amenable to such deportation.

It is unnecessary here to determine whether any of the adjudications against applicant constitutes "conviction of a crime involving moral turpitude", thus mandatorily disqualifying him from the ARC permit he is seeking. R. S. 33:1-25, 26. For, even if clear of this mandatory disqualification, the question yet remains whether, in the State Commissioner's discretion, the permit should be issued. Re Case No. 251, Bulletin 303, Item 12. In view of applicant's long record, sound discretion requires that he be deemed personally unfit for such permit.

It is, therefore, recommended that his application be denied.

Nathan Davis,  
Attorney-in-Chief.

APPROVED:

E. W. GARRETT,  
Chief Deputy Commissioner.

10. DISCIPLINARY PROCEEDINGS - UNDISCLOSED PARTNERSHIP - LICENSE NOW IN NAME OF PARTNERS - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary )  
Proceedings against )

CHRIST KLOUFIS & PETER MISTHOS,  
8 West Main St., )  
Columbus, Mansfield Township, )  
Burlington County, N. J., )

CONCLUSIONS  
AND ORDER

Holders of Plenary Retail Consump- )  
tion License C-1, issued by the )  
Township Committee of the Township )  
of Mansfield. )  
- - - - - )

J. Garry Keely, Esq., Attorney for the State Department of  
Alcoholic Beverage Control.  
Edwin R. Semple, Esq., Attorney for Defendant-Licensees.

Defendant, Christ Kloufis, has pleaded guilty to the following charges: (A) That he failed to notify the issuing authority in writing within ten (10) days after the occurrence thereof, of a change in the facts set forth in his individual application for license for the 1938-39 period, in violation of R. S. 33:1-34; (B) Aiding and abetting Peter Misthos, a non-licensee, to exercise the rights and privileges of the license theretofore issued to Christ Kloufis, individually, for the 1938-39 period, contrary to R. S. 33:1-26 and in violation of R. S. 33:1-52.

Defendant, Peter Misthos, has pleaded guilty to the charge that he, a non-licensee, attempted and held himself out as authorized to exercise the rights and privileges of a license, during the 1938-39 period, in violation of R. S. 33:1-26.

The Departmental file discloses that in or about July 1938, Kloufis entered into a partnership agreement with Misthos and that in August of that year it became necessary for Kloufis to visit Greece, where he remained for approximately eight (8) months. Before leaving, Kloufis executed the following instrument:

"Be it understood that I (Christ Kloufis) do hereby give my partner, (Pete Methos) complete charge of my business at Columbus, New Jersey from August 27, 1938, to pay all bills, and to guard my interest until my return.

"Signed

"Christ Kloufis

"Charles B. DuBell  
Witness

"Clifford B. Townsend  
Witness

"Notary Public of N. J.

"My Commission Expires Oct. 2, 1938."  
(Seal)

This instrument Kloufis presented to a member of the Township Committee of Mansfield Township.

Kloufis, it appears, returned to this country in or about May 1939 and thereafter, upon application, a proper license bearing the names of both partners, Kloufis and Misthos, was issued by the local authority for the 1939-40 period. There is therefore no violation at present.

While the above facts may be considered as mitigating circumstances, they do not excuse the failure to give written notice to the issuing authority of any subsequent change whatever in the facts as set forth in the application for a license.

After the issuance of his 1938-39 license, Kloufis took in Misthos as a partner. From that time on and until the issuance of the 1939-40 license, Misthos must be regarded as a non-licensee who exercised the privileges of the license granted to Kloufis alone. "Licensees must learn that before taking in a partner the license must be properly transferred." Re Bernstein, Bulletin 388, Item 3. Under the circumstances, defendants' license will be suspended for ten (10) days.

Accordingly, it is, on this 9th day of April, 1940,

ORDERED, that Plenary Retail Consumption License C-1, heretofore issued to Christ Kloufis & Peter Misthos by the Township Committee of the Township of Mansfield, County of Burlington, be and the same is hereby suspended for a period of ten (10) days, effective April 12, 1940, at 3:00 A. M.

D. FREDERICK BURNETT,  
Commissioner.  
  
By: E. W. Garrett,  
Chief Deputy Commissioner.

11. DISCIPLINARY PROCEEDINGS - FRONT - INTEREST OF DISQUALIFIED PERSON TERMINATED - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against	)	
	)	
ALBERT CASAGRANDE,	)	CONCLUSIONS
250 Norwood Avenue,	)	AND ORDER
Oakhurst, Ocean Twp.,	)	
Monmouth County, N. J.,	)	
Holder of Plenary Retail Distribution License D-2, issued by the Township Committee of Ocean Township, Monmouth County.	)	
-----)	)	

Stanton J. MacIntosh, Esq., for the State Department of Alcoholic Beverage Control.  
Lawrence A. Carton, Jr., Esq., for the Defendant-Licensee.

The licensee was charged with (1) falsifying his application for license in denying that any person other than himself had any interest in the license applied for or the business to be conducted under the license, and (2) aiding and abetting a non-licensee to exercise the rights and privileges of a license.

At the hearing the licensee pleaded guilty, frankly admitting (as he had when questioned by investigators of this Department) that he was in partnership with one John Capestro, who had been a resident of Long Island until February 1939, and who consequently lacked the five years' residence in New Jersey requisite to qualify him as a licensee.

The licensee claims that he had no intention of violating the law and attributes the creation of the objectionable licensing situation to improper advice from a municipal official.

In mitigation and to establish his good faith, the licensee established that prior to the hearing he had purchased the interest of his partner Capestro, producing supporting documentary evidence. Vigorous cross-examination of the licensee and the partner failed to create any suspicion that the disassociation of the licensee from his disqualified partner was not bona fide.

The correction of the situation is not a defense but goes only to mitigation of any penalty that may be imposed. Despite the licensee's prompt action after the charges were served, the fact remains that he did swear falsely in his license application and did act as a front for his unqualified partner.

In fixing the period of suspension, the licensee's cooperation with the investigators, his guilty plea and his prompt correction of the situation will be taken into consideration. The license will be suspended for ten days.

Accordingly, it is ORDERED that Plenary Retail Distribution License D-2, heretofore issued to Albert Casagrande by the Township Committee of Ocean Township, Monmouth County, be and hereby is suspended for a period of ten days commencing 3:00 A.M. on Monday, the 15th day of April, 1940.

D. FREDERICK BURNETT,  
Commissioner.

By: E. W. Garrett,  
Chief Deputy Commissioner.

Dated: April 10, 1940.

## 12. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

April 9, 1940

Re: Case No. 321

Applicant, who has a criminal record, seeks a ruling as to whether any crime of which he has been convicted involves moral turpitude and hence disqualifies him, under R.S. 33:1-25, 26 from obtaining a liquor license or working for a liquor licensee in this State.

In 1916 applicant, then ten years old, was found guilty, in Juvenile Court in this State, of stealing a toy "dime" bank from a store, and was released on probation.

In 1923, when sixteen, he was found guilty, in the same Court, of receiving stolen goods. He states that two young boys (one being a fifteen year old neighbor) had stolen, among other things, some radio parts and had sold him one of the parts, worth \$1.50, for 50¢. Applicant was fined \$25.00 and costs, and released on probation.

Since these two adjudications were in Juvenile Court, they may not be deemed convictions of a crime within R. S. 33:1-25, 26. Re Case No. 62, Bulletin 194, Item 5; Re Case No. 279, Bulletin 324, Item 11.

However, in 1924, applicant, then seventeen, was convicted in regular Criminal Court in this State of "breaking and entering." In explanation, he states that the same boy-neighbor who had previously sold him the stolen radio part had, now being sixteen, decided to run away from home, and persuaded applicant to join him; that they planned, before leaving, to break into a clothing store because they "wanted clothes to start out with"; that he (applicant) acted as "look-out" while the other entered the store through the basement. Nothing was stolen, however, since a policeman arrived at the scene before actual theft could occur.

For this offense, applicant was at first sentenced to Rahway Reformatory for an indefinite period. However, after two months, his sentence was modified and applicant was fined \$50.00 and released on three years' probation.

Since applicant (now thirty-four) was under eighteen years of age when he committed this crime, his youth is a pertinent circumstance to be considered in determining whether it involves moral turpitude. Re Case No. 36, Bulletin 149, Item 1. On the other hand, the fact that he had twice previously been guilty of juvenile delinquency must, even though such adjudications do not constitute convictions of a crime, likewise be considered in determining this question. Re Rehabilitation Case No. 72, Bulletin 375, Item 6.

Considering all the facts, and in view that neither of the instances of juvenile delinquency was apparently serious (one occurring when applicant was but ten), and in further view that his crime of "breaking and entering" was committed when he was seventeen and seems to have been the irresponsible act of a boy "running away" from home, I do not believe that such crime should be deemed sufficiently heinous as to involve moral turpitude. Cf. Re Case No. 146, Bulletin 167, Item 4; Re Case No. 164, Bulletin 175, Item 12; Re Case No. 279, Bulletin 324, Item 11; Re Case No. 298, Bulletin 355, Item 2.

Applicant's record since 1924 is clear.

It is recommended that, in so far as his criminal record is concerned, applicant be declared eligible to obtain a liquor license or work for a liquor licensee in this State.

Nathan Davis,  
Attorney-in-Chief.

APPROVED:

E. W. GARRETT,  
Chief Deputy Commissioner.

13. DISCIPLINARY PROCEEDINGS - GAMBLING - 3 DAYS ON CONFESSION OF GUILT.

In the Matter of Disciplinary	)	
Proceedings against	)	
	)	
PETER SABELLO,	)	CONCLUSIONS
717 Hudson Avenue,	)	AND ORDER
West New York, N. J.,	)	
	)	
Holder of Plenary Retail Consump-	)	
tion License C-84, issued by	)	
the Board of Commissioners of the	)	
Town of West New York.	)	
-----	)	

Charles Basile, Esq., Attorney for the State Department of  
Alcoholic Beverage Control.  
Peter Sabello (Sabella), by Harry Sabella, Pro Se.

The licensee, through his father, pleaded guilty to a charge of permitting a card game for money on the licensed premises, in violation of State Regulations 20, Rule 7.

The file shows that one Fred Rubin visited the licensed premises and participated in a stud poker game in the rear room of the licensed premises. Three other persons were in the game, which lasted about two hours, during the course of which Rubin lost about Ninety Dollars. Rubin's suspicion that all was not well led to an altercation among the players outside the licensed premises and the involvement of the players with the West New York police, who investigated and reported the matter to this Department.

The license will be suspended for three days instead of the usual five days in view of the guilty plea.

Accordingly, it is ORDERED, that Plenary Retail Consumption License C-84, heretofore issued to Peter Sabello by the Board of Commissioners of the Town of West New York for premises 717 Hudson Avenue, and transferred during the pendency of the proceedings to premises 632 Fillmore Place, be and hereby is suspended for three days, commencing 4:00 A.M. on Monday, the 15th day of April, 1940.

D. FREDERICK BURNETT,  
Commissioner.

By: E. W. Garrett,  
Chief Deputy Commissioner.

Dated: April 10, 1940.

14. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - 5 DAYS ON GUILTY PLEA.

In the Matter of Disciplinary Proceedings against )

CATRIN MELNICK, )  
199 Rose Street, )  
Newark, New Jersey, )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-940, issued by the )  
Municipal Board of Alcoholic Beverage Control of the City of )  
Newark. )  
----- )

Nathaniel J. Klein, Esq., Attorney for the Licensee.  
Stanton J. MacIntosh, Esq., Attorney for Department of  
Alcoholic Beverage Control.

The licensee has pleaded guilty to charges that on or about January 20, 1940 she sold alcoholic beverages to a minor boy in violation of R. S. 33:1-77 and Rule 1 of State Regulations #20.

The usual punishment is ten (10) days, less five (5) for the plea, which was entered in ample time prior to the hearing and thereby saved the Department time and expense.

Accordingly, it is, on this 10th day of April, 1940,

ORDERED, that Plenary Retail Consumption License C-940, issued to Catrin Melnick by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for five (5) days, effective April 15, 1940, at 3:00 A. M.

D. FREDERICK BURNETT,  
Commissioner.

By: *E. W. Burnett*  
Chief Deputy Commissioner.

*nc*