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

BULLETIN 505 APRIL 29, 1942

1. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - ADMISSION TO REFILLING FROM HALF-GALLON BOTTLE INTO QUART BOTTLE OF SAME BRAND - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against

BERTY ANDREW CECH,
502 Lamberton Street,
Trenton, N. J.,

Holder of Plenary Retail Consumption License C-15 issued by the Board of Commissioners of the City of Trenton.

CONCLUSIONS AND ORDER

Berty Andrew Cech, Pro Se.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were preferred against the licensee alleging (1) that, on September 17, 1941, he possessed illicit alcoholic beverages in that two bottles found on his premises contained alcoholic beverages which varied from genuine samples in proof; and (2) that, without holding a proper license therefor, he refilled the aforesaid bottles in violation of R. S. 33:1-78.

The evidence establishes that licensee's wife poured some liquor from a half-gallon bottle of Green River Blended Whiskey 86.8 Proof into a quart bottle of Green River Blended Whiskey 90 Proof, thus reducing the proof of contents of the latter bottle to 87.6 proof. The evidence establishes also that she poured some liquor from a half-gallon bottle of Old Drum Brand Blended Whiskey 90 Proof into a quart bottle of Old Drum Brand Blended Whiskey 86 Proof, thus increasing the proof of contents of the latter bottle to 89 proof.

As a result of these acts of licensee's wife, the alcoholic beverage in each of the seized bottles became an illicit beverage because the label thereon no longer truly described the contents of each bottle. Likewise the licensee is responsible for his wife's acts in refilling the bottles. Hence I find him guilty as charged.

Mrs. Cech has stated that she refilled the bottles in question because she could not easily lift the half-gallon bottles due to the neuritis from which she was suffering. Giving the licensee the benefit of the doubt and accepting the explanation of what happened as a true one, places this case in a somewhat different category from those cases where liquor of one brand is poured into bottles of another, or where bootleg liquor is used in making the refills. See in Re Smith, Bulletin 482, Item 1, where a thirty-day penalty was imposed. The action of Mrs. Cech is, none the less, reprehensible, and in the interest of sound enforcement must not be permitted. Licensees and their agents must learn that they cannot tamper with the contents of open bottles.

Under all of the circumstances, I shall suspend the license for ten days. It is to be hoped that this case will serve as a warning to other licensees. In the event that licensees fail to heed the same they may expect more severe penalties.

Accordingly, it is, on this 17th day of April, 1942,

ORDERED, that License C-15, issued by the Board of Commissioners of the City of Trenton to Berty Andrew Cech for premises at 502 Lamberton Street, Trenton, be and the same is hereby suspended for ten (10) days, commencing April 21, 1942, at 2:00 A.M. and terminating May 1, 1942, at 2:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

2. MORAL TURPITUDE - SALE OF NARCOTICS INVOLVES MORAL TURPITUDE.

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

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2.

Case No. 198.

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

Petitioner, in his application for employment permit necessitated by reason of his non-citizenship, disclosed that in 1924 he was convicted of unlawful possession and sale of narcotics, a crime which involves moral turpitude. Re Case No. 300, Bulletin 353, Item 13. No facts have been presented to cleanse petitioner's conviction of that element.

Although sentenced to ten years in jail, petitioner was released in 1928. He now seeks to have the disqualification resulting from his conviction removed. See R. S. 33:1-31.2.

Three character witnesses appeared on petitioner's behalf — a lawyer, a butcher and a shoe salesman. They have known petitioner for fourteen, seven and six years, respectively. All testified that petitioner is industrious, associates only with respectable citizens and bears a good reputation in his community for being honest and law-abiding.

Petitioner stated that his profession is that of a chef and frankly admitted that ever since Repeal he has been working in that capacity on premises licensed for the sale of liquor. Concerning his ineligibility due to his non-citizenship, petitioner testified that his wife, whom he married in 1915, is a citizen of the United States and he believed that he thereby also became such a citizen. It was not until the enactment of the recent Federal Alien Registration Act that he learned for the first time that he was not a citizen of this country. As to his criminal conviction, he testified that he had never handled alcoholic beverages in any of the licensed premises where he has been employed and that it never occurred to him that any disqualification might attach to his being

employed merely as a chef, albeit on premises where alcoholic beverages were sold.

Petitioner has a clear record ever since 1928. The Chief of Police of the municipality in which petitioner resides reports that a check of his files discloses no pending complaints or investigations against petitioner.

Petitioner's employment on licensed premises is necessarily limited, because of his non-citizenship, to duties other than to "sell or solicit the sale or participate in the manufacture, rectification, blending, treating, fortification, mixing, processing or bottling of any alcoholic beverage." See R. S. 33:1-26. Under the circumstances, and in view that petitioner has apparently completely rehabilitated himself and that his prior employment on licensed premises does not appear to have resulted from any deliberate intent to evade the provisions of the Alcoholic Beverage Law, I shall lift the disqualification arising from his conviction and give him another chance to earn his living in his chosen profession.

Accordingly, it is, on this 17th day of April, 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.

3. ELIGIBILITY - OPERATION OF ILLICIT STILL SINCE REPEAL INVOLVES MORAL TURPITUDE - APPLICANT DECLARED INELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

April 20, 1942

Re: Case No. 410

In May 1938 applicant pleaded guilty in a Federal Court to two indictments in which it was alleged that he and others had operated illegal stills. He was sentenced to a year and a day; actually served nine months and eighteen days of his sentence and was then placed on probation for five years.

At the hearing herein applicant testified that he was not connected in any way with the operation of either still. However, the question of his guilt or innocence cannot be redetermined in this proceeding. The severe sentence imposed leads to the conclusion that the crime of which he was convicted involved moral turpitude. Removal Case No. 177, Bulletin 478, Item 10, and cases therein cited.

It is recommended that applicant be advised that he is not eligible to be employed by or connected in any business capacity with a liquor licensee in the State of New Jersey.

EDWARD J. DORTON,
Deputy Commissioner and
Counsel.

APPROVED:
ALFRED E. DRISCOLL,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - FAILURE TO DISCLOSE INTEREST IN LICENSED PREMISES IN APPLICATION FOR EMPLOYMENT PERMIT, IN VIOLATION OF R. S. 33:1-26 - EXERCISING THE RIGHTS AND PRIVILEGES OF A LICENSE - EMPLOYMENT PERMIT REVOKED.

In the Matter of Disciplinary Proceedings against BEN RAPPAPORT, 191 Prospect Avenue, Hackensack, N. J., Holder of Employment Permit No. 3443 for the current year, issued by the State Commissioner of Alcoholic Beverage Control.	CONCLUSIONS AND ORDER

Richard E. Silberman, Esq., Attorney for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-permittee did not appear at the hearing to contest the charge that:

> "From on or about September 3, 1940 to and including December 29, 1941, you, not being the licensee, exercised, attempted to exercise and held yourself out as authorized to exercise the rights and privileges of Plenary Retail Distribution License D-4 for the year 1940-41 and D-16 for the year 1941-42, issued to Gold Label Liquor Co., Inc. for premises 429 Main Street, Hackensack, N. J. by the City Council of the City of Hackensack, in violation of R. S. 33:1-26."

Investigators' reports, and signed statements of Ben Rappaport and Samuel Rappaport, his brother, in the Departmental file, clearly establish that Ben Rappaport, disqualified from holding a liquor license by lack of five years' residence in this State, organized Gold Label Liquor Co., Inc., which obtained the above licenses; that he actually owned this retail liquor business but concealed his real interest therein by manipulating the stock of such corporation so as to make it appear that he was the owner of less than ten per cent, and his brother, Samuel Rappaport, the owner of the majority of such stock.

Being also disqualified to work on licensed premises because of non-residence, he obtained from this Department an employment permit and, while holding this employment permit, actually operated the licensed business as his own.

I find the defendant-permittee guilty as charged, and his permit will be revoked outright. He has abused the privilege extended to him by the permit by holding a prohibited interest in a retail license. See Re Klimenko, Bulletin 500, Item 4.

Accordingly, it is, on this 18th day of April, 1942,

ORDERED, that Employment Permit No. 3443, heretofore issued to Ben Rappaport by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL,
Commissioner.

5. ELIGIBILITY - THE CRIME OF RECEIVING STOLEN GOODS INVOLVES MORAL TURPITUDE - APPLICANT DECLARED INELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

April 20, 1942

Re: Case No. 421

Applicant, not being a five-years' resident of the State, seeks a permit (under R. S. 33:1-26) to work for a liquor licensee in New Jersey.

Since applicant has a criminal record, hearing was held on his application to determine whether he has ever been convicted of a crime involving moral turpitude, thus being peremptorily barred from obtaining a liquor license or working for a liquor licensee in this State. See R. S. 33:1-25, 26.

In 1937 applicant was arrested in New York City for "felonious assault" but was apparently acquitted.

However, theretofore, in 1912, when applicant was about twenty-five years of age, he pleaded guilty to "receiving stolen goods" and was sentenced to State Reformatory, where he remained for some fourteen months.

The facts appear to be that applicant was found, at three o'clock in the morning, with a valise containing some $50.00 worth of merchandise which had just been stolen from a dry goods store. Arrested for breaking into this store, such charge was apparently dropped when applicant pleaded guilty to the "receiving" charge.

Although applicant now disclaims any guilt in the matter, he may not here collaterally attack his own confessive plea or the merits of his conviction in the criminal court. Re Case 162, Bulletin 477, Item 6, and cases there cited; Re Case 172, Bulletin 484, Item 9; Re Case 394, Bulletin 486, Item 5.

"Receiving stolen goods" is a crime which, from its very nature, ordinarily involves moral turpitude. Re Case 198, Bulletin 220, Item 9; Re Case 242, Bulletin 292, Item 2; Re Case 67, Bulletin 345, Item 7; Re Case 304, Bulletin 363, Item 7. Nothing is shown in the present case to free petitioner's crime of that element.

Accordingly, it is recommended that applicant be declared disqualified, by reason of such conviction, from holding a liquor license or working for a liquor licensee in New Jersey, and that his pending application for employment permit be denied.

Nathan Davis,
Attorney-in-Chief.

APPROVED:
ALFRED E. DRISCOLL,
Commissioner.

6. MORAL TURPITUDE - THE CRIME OF ADULTERY INVOLVES MORAL TURPITUDE.

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

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2.

Case No. 213.

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

In 1930 petitioner pleaded non vult to the crime of adultery and was placed on probation for three years. He applies herein for a lifting of the disqualification resulting from said conviction. On March 6, 1939 petitioner was arrested on a charge of manslaughter by automobile. Subsequently a nolle prosse was entered to an indictment founded on said charge.

At the hearing, petitioner testified that for the past fourteen years he has been employed by a trucking company as a driver and that for the past thirty-six years he has lived in the city where he now resides. Report received from the Chief of Police of said city has advised that there are no complaints or criminal investigations pending against petitioner.

At the hearing herein, three witnesses appeared on petitioner's behalf. They testified that they have known him, respectively, for twenty years, twelve years and ten years; that he is married and that, since 1929, he has been law-abiding.

I find that petitioner has not been convicted of any crime within the past twelve years. His testimony that the manslaughter charge arose as a result of an automobile accident for which he was blameless is supported by the subsequent disposition of the criminal case. Under the circumstances, I do not believe that his arrest in 1939 should bar him from relief in this proceeding. In view of the testimony given herein, I conclude that petitioner's association with the alcoholic beverage industry will not be contrary to the public interest. I shall, therefore, lift his disqualification.

Accordingly, it is, on this 20th day of April, 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.

7. DISCIPLINARY PROCEEDINGS - DISTURBANCE ON LICENSED PREMISES RESULTING IN INJURY TO UNRULY CUSTOMER - DEPARTMENT FAILED TO CARRY THE BURDEN OF PROOF THAT LICENSEE WAS THE AGGRESSOR OR USED MORE FORCE THAN NECESSARY TO DEFEND HIMSELF - CHARGE DISMISSED.

In the Matter of Disciplinary Proceedings against

JOSEPH DUBNOWSKI,
538 Market Street,
Newark, N. J.,

Holder of Plenary Retail Consumption License C-705 for the fiscal year ending June 30, 1941, and Plenary Retail Consumption License C-671 for the current fiscal year, both issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Sidney Lasser, Esq., by Harold J. Cavanaugh, Esq., Attorney for the Licensee.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleaded not guilty to the following charge:

"On or about November 5, 1940 you allowed, permitted and suffered a brawl and disturbance in and upon your licensed premises in violation of Rule 5 of State Regulations No. 20."

On the day in question there was a disturbance in the licensed premises during which Watkins, a patron, received head injuries which required hospital treatment.

It is difficult to ascertain what actually occurred. The matter did not come immediately to the attention of the police, and it was three weeks after the trouble when they obtained written statements from Watkins and the licensee. At the hearing herein both varied their stories, coloring the details to their own advantage.

They both agreed that the row started about closing time and after there was something said about a "free" beer, or nightcap. According to Watkins, he had been well behaved throughout the time he was there, and when informed that closing time was near, merely exclaimed, "What, no beer on the house", whereupon the licensee, without any further provocation, shouted "Get out", and at the same time struck him over the head with a stick, inflicting the injuries in question. However, his friend Heiller, who was with him in the tavern, testified that Watkins was not "exactly quiet"; further, that Watkins was in back of him when he was injured and when he (Heiller) turned around he did not see any stick in the licensee's hand.

According to the licensee's written statement, it was the first time that Watkins had visited his tavern; that practically from the time he entered he was abusive and insulting, and finally, when requested to leave at closing time, he demanded a free nightcap; that

when his request was refused, he threatened to strike the licensee and thereupon the licensee brought out a stick from behind the bar and again told Watkins to leave; that instead Watkins again tried to strike him, whereupon he hit Watkins on the head with the stick.

At the hearing the licensee denied that he had actually struck Watkins with the stick and instead, claimed that Watkins reached across the bar and struck him in the face and that he returned the blow, whereupon Watkins slipped to the floor and struck his head on the rail; that when Watkins regained his feet, he threatened to again strike the licensee, who thereupon obtained a stick from behind the bar, but did not use it because Watkins then left the premises without any further trouble.

The licensee, in his present version of the affair, heightened the threat of danger to himself and minimized the extent to which he participated in the row. I suspect that this story is not altogether true, although it may be difficult for him to recall long after the event just what actually took place. Another factor in his favor is that he has had a licensed tavern since 1938 and this is the first time in the conduct of such business that he has been in trouble.

On the other hand, Watkins' story is open to greater suspicion because he has a long criminal record and further, because, after the disturbance he extracted money from the licensee, under pressure, in payment of alleged damages which he suffered and signed a receipt in which he stated, "I will bother for money no more"; yet despite this he later endeavored to hold up the licensee for more money -- first, by a threatened suit, and later by what savored of an offer to stay away from the hearing.

The case turns on the question as to whether the licensee, with or without provocation, attacked Watkins, in which event he would be at fault (Re Polster, Bulletin 388, Item 10), or whether he merely defended himself in the face of actual or threatened attack, in which event he would not be guilty of misconduct (Re Silver, Bulletin 441, Item 12).

There is no independent, impartial testimony to aid me in reaching a decision upon that question. I merely have the word of Watkins against that of the licensee and his son, each of whom are influenced by their self-interest. The licensee should not be convicted unless the burden of proof necessary to sustain the truth of the charges has been met, and Watkins' testimony is insufficient for that purpose. It does not appear clearly that the licensee was the aggressor in the disturbance, or that he used more force than necessary under the circumstances to protect himself. Consequently, I cannot in fairness conclude that the licensee is guilty of the charge.

Accordingly, it is, on this 21st day of April, 1942,

ORDERED, that the charge be and the same is hereby dismissed.

ALFRED E. DRISCOLL,
Commissioner.

8. APPELLATE DECISIONS - NEMDEROLOC SOCIAL CLUB v. TOWNSHIP OF SOUTH BRUNSWICK.

NEMDEROLOC SOCIAL CLUB,)
Appellant,)
-vs-) ON APPEAL
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF SOUTH BRUNSWICK,) ORDER OF DISMISSAL
Respondent.)

Charles R. Sperling, Esq., Attorney for Appellant.
Klemmer Kalteissen, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of a club license for premises on State Highway Route No. 27, South Brunswick Township.

Subsequent to the perfecting of the appeal herein, respondent amended its ordinance by inserting therein or adding thereto a provision that no club licenses shall be issued in South Brunswick Township. Counsel for the appellant having advised the Commissioner, as well as counsel for the respondent, that his client intended to withdraw its appeal, no one appeared at the hearing scheduled to be held on April 9, 1942. Rule 10 of State Regulations No. 14 provides that the failure of appellant to appear at the time and place designated for the hearing of an appeal shall be cause for dismissal.

Accordingly, it is, on this 20th day of April, 1942,

ORDERED, that the within appeal be and the same is hereby dismissed.

ALFRED E. DRISCOLL,
Commissioner.

9. ELIGIBILITY - APPLICANT PLEADED GUILTY TO AN INDICTMENT CHARGING SALES OF ALCOHOLIC BEVERAGES TO MINORS IN VIOLATION OF R. S. 33:1-77 - SALES ON A CONSIDERABLE SCALE TO MINORS RANGING IN AGE FROM FIFTEEN TO NINETEEN INCLUSIVE - MORAL TURPITUDE - APPLICANT DECLARED INELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

In the Matter of Eligibility)
to receive a liquor license
or to be employed by a liquor) CONCLUSIONS
licensee.)
Case No. 422.)

I. William Aronsohn, Esq., Attorney for Applicant.

BY THE COMMISSIONER:

The purpose of this proceeding is to determine the eligibility of the applicant to receive a liquor license or to be employed by a liquor licensee.

On March 17, 1941 applicant pleaded guilty to an indictment charging him with selling alcoholic beverages to minors in violation of the Alcoholic Beverage Law. R. S. 33:1-77. Thereafter, on May 16, 1941, the Court of Special Sessions of Bergen County imposed upon him the minimum fine of $100.00.

Before we may determine the eligibility of the applicant, it is necessary to ascertain whether the crime aforesaid involved the element of moral turpitude, in which event the applicant is neither eligible to hold a liquor license nor may he be employed on licensed premises in this State. R. S. 33:1-25, 26.

The record before me includes voluminous testimony and three stipulations covering the various criminal proceedings which followed the sales in question. The facts appear to be as follows:

On October 19, 1940, a party of eight persons -- four boys and four girls -- entered applicant's licensed premises and seated themselves at a table in the dining room. Applicant approached them, inquired what they wanted, and then sent his wife to wait upon them. The applicant was apparently a little suspicious of their ages and testified that he instructed his wife to ascertain how old they were. When asked what made him suspicious he answered, "They looked kind of small." Although he testified that he heard his wife question the boys as to their ages, his testimony is confusing as to whether his wife asked the same question of one girl or of all four of the girls. In any event, it is apparent that the applicant did not adopt the safeguards set forth in R. S. 33:1-77. The applicant, who had proceeded behind the bar after telling his wife to take the order, served the party with their first round of alcoholic beverages. This consisted of four beers, three Tom Collins and one soda. During their stay at the licensed premises, which is reported not to have lasted more than an hour, four rounds of drinks were served to the party. In all these youngsters consumed eighteen beers, ten Tom Collins and two sodas. The four girls appeared, testified, and were under my personal observation at the hearing. Despite the fact that the hearing took place more than a year after their visit to the applicant's premises, all of the girls were so unmistakably under twenty-one years of age that an ordinary prudent person could not possibly have been misled as to their ages. Actually these girls at the time they were served alcoholic beverages

at the applicant's tavern, were 15, 16, 17 and 18. In direct contradiction of applicant's testimony, three of the girls testified that they were not asked their ages by anyone and one girl said that she had overheard one of the boys (who was twenty-two years old) say to the applicant's wife that he was "old enough to know better."

The sale of alcoholic beverages to minors is a most serious offense. In disciplinary proceedings against a licensee, I have already indicated that where sales are made to minors whose youth and age are apparent from a most casual scrutiny, heavy-handed penalties will be imposed. Re La Corte, Bulletin 474, Item 10.

The offense in this case was highly reprehensible, involving, as it did, the sale of alcoholic beverages to youngsters on an apparently large scale. In addition to the girls, two of the boys in the party were also minors, one being eighteen and the other nineteen years of age. The contemptible nature of the crime and the purpose of the statute prohibiting the sale of liquor to persons under twenty-one years of age is clearly demonstrated by the outgrowth of this particular affair. After the youngsters left the applicant's premises the fifteen year old girl was raped by one of the boys while riding in an automobile. The boy was subsequently apprehended and pleaded guilty to the crime.

The circumstances surrounding the crime for which the applicant was convicted are so aggravated as to clearly warrant a finding that the crime in question involved the element of moral turpitude.

Accordingly, it is, on this 23rd day of April, 1942,

ORDERED and DECLARED that the applicant, having been convicted of a crime involving moral turpitude, is disqualified under the Alcoholic Beverage Law from holding a liquor license or being employed by a liquor licensee in this State.

ALFRED E. DRISCOLL,
Commissioner.

10. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENT IN LICENSE APPLICATION - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT UPON EXPIRATION OF 40 DAYS UPON SATISFACTORY PROOF OF BONA FIDES OF LICENSE TRANSFER.

In the Matter of Disciplinary Proceedings against ENIS FLECKENSTEIN, T/a MILANO, 1275 Anderson Ave., Fort Lee Borough, P. O. Palisade, N. J., Holder of Plenary Retail Consumption License C-34 issued by the Mayor and Council of the Borough of Fort Lee.	CONCLUSIONS AND ORDER

Lloyd L. Schroeder, Esq. and William I. Aronsohn, Esq., Attorneys for Defendant-Licensee.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee has pleaded guilty to charges alleging that (1) she falsely denied in her license applications that Enrico Volpi (her father) had any interest in her license, in violation of R. S. 33:1-25, and (2) permitting him to exercise the privileges of her license contrary to R. S. 33:1-26, in violation of R.S.33:1-52.

In written statements obtained from the licensee and Enrico Volpi and substantiated by oral testimony at the hearing, it is admitted that ever since April 1941 the licensee has been holding the license as a "front" for her father. Until that date, the license for the premises in question had been issued in the name of Enrico Volpi, who, in March 1941, pleaded guilty to the crime of selling alcoholic beverages to minors. This crime has been ruled to involve the element of moral turpitude (Re Case No. 422, Bulletin 505, Item 9), thus rendering him ineligible for a liquor license or employment by a liquor licensee in this State. R. S. 33:1-25, 26. It was because of this conviction that the license was placed in the name of Enis Fleckenstein.

Because of the gravity of the violation involving the sale to minors (see Re Case No. 422, supra), and the subsequent attempt to circumvent the statutory disqualification arising from the criminal conviction by employing the deliberate and fraudulent subterfuge of a "front", a severe suspension of the license is indicated. In fixing the penalty, however, I shall take into consideration the fact that the undisclosed principal has been punished in the criminal proceedings; that, in addition, his license was suspended for ten days at the conclusion of the disciplinary proceedings before the local authorities on charges arising out of the sale to minors, and that, under the law, he will not be eligible to receive a liquor license for at least five years from the date of his conviction. See R. S. 33:1-31.2.

Under all of the circumstances, I would normally impose a penalty of forty days in this case. However, since the business cannot be permitted to operate until the "front" is corrected, I shall suspend the license for the balance of its term, with leave to lift the suspension after forty days have elapsed from the effective date of the suspension herein imposed.

Accordingly, it is, on this 23rd day of April, 1942,

ORDERED, that Plenary Retail Consumption License C-34, heretofore issued by the Mayor and Council of the Borough of Fort Lee to Enis Fleckenstein, for premises 1275 Anderson Avenue, Fort Lee Borough, P. O. Palisade, N. J., be and hereby is suspended for the balance of its term, effective April 28, 1942, at 12:01 A.M.; and it is further

ORDERED that, if it satisfactorily appears, on verified petition and proper proof, that the "front" has been fully and properly corrected, the said suspension will be lifted, provided, however, that in no event shall such suspension be lifted prior to the expiration of forty (40) days from the effective date of the suspension herein imposed.

ALFRED E. DRISCOLL,
Commissioner.

11. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BY A RETAILER TO A WHOLESALER IN VIOLATION OF R. S. 33:1-2 - LICENSEE GUILTY - NO SUSPENSION BECAUSE OF LAPSE OF TIME - VALIDATING PERMIT REQUIRED.

In the Matter of Disciplinary Proceedings against

TEANECK BEVERAGE CO., INC.,
457 Cedar Lane,
Teaneck, N. J.,

Holder of Plenary Retail Distribution License D-1 issued by the Township Council of the Township of Teaneck, transferred during the pendency of the proceedings to

477-A Cedar Lane,
Teaneck, N. J.

CONCLUSIONS AND ORDER

Jerome B. McKenna, Esq., Attorney for the Department of Alcoholic Beverage Control.
Teaneck Beverage Co., Inc., Pro Se, by Morris H. Weinstein, Secretary.

BY THE COMMISSIONER:

This case was instituted on April 12, 1938, and although heard on April 27th of the same year, no opinion has been rendered or order entered up to the present moment.

A review of the record discloses that charges were served upon the licensee alleging that on divers dates between July 8, 1937 and December 10, 1937, it violated the provisions of Section 2 of the Alcoholic Beverage Control Act (now R. S. 33:1-2) by selling

alcoholic beverages not pursuant to and within the terms of its license in that it sold such beverages to the holder of a plenary wholesale license.

The licensee pleaded guilty to the charge.

It appears that during the period in question, the licensee (hereinafter referred to as "Teaneck") was a customer of Gillhaus Beverage Co., Inc. (hereinafter referred to as "Gillhaus"), a licensed wholesaler. Gillhaus was either unable to purchase Cutty Sark Scotch Whiskey from the manufacturer or other wholesalers or found it inconvenient so to do. On a number of different occasions Gillhaus arranged to pick up varying amounts of Cutty Sark Whisky from Teaneck (which the latter had purchased from another wholesaler) for sale and delivery to other retailers, Teaneck's open account with Gillhaus being credited with the wholesale price of the Cutty Sark so obtained.

The transaction clearly constitutes a sale of alcoholic beverages by a retailer to a wholesaler. However, a retailer has no right to sell to wholesalers, other retailers or anyone except a consumer or permittee. See Re Grimm, Bulletin 13, Item 2; Re Greer, Bulletin 50, Item 6.

The Secretary of Teaneck testified that he did not know that the transactions were in violation of law. The evidence indicates that Teaneck derived no profit from the transaction and that it engaged in the practice merely as an accommodation to Gillhaus. It further appears that the practice was discontinued as soon as its illegality was called to the attention of Teaneck by investigators of this Department.

Ignorance of the law is not an excuse. This was true in 1937 when the Alcoholic Beverage Law had already been in operation for four years. The good intentions of the licensee and the lack of improper motivation are factors that will be considered only in connection with the penalty to be imposed. Even if the licensee had not pleaded guilty, under the facts as above set forth, I would have found it guilty as charged.

I am not, however, inclined to impose any penalty of suspension of license in this case in view of the long and unexplained lapse of time that has occurred since the institution of the proceedings -- a period of four years. Mindful, too, of the extenuating circumstances above mentioned, it seems to me that it would be unconscionable to penalize the licensee now for its ancient misdeed when there is no reason why that penalty, if warranted, should not have been imposed long ago by my predecessor.

On the other hand, licensee should not be permitted to escape scot-free merely because of the fortuitous circumstance that no order of suspension was entered for so long a period after the case was heard. Substantial justice will be achieved if the licensee is required to obtain a special permit to validate its unlawful sales, at a fee to be fixed commensurate with the quantity of alcoholic beverages involved.

Accordingly, it is, on this 24th day of April, 1942,

ORDERED, that the proceedings herein be and they hereby are terminated. No penalty of suspension or revocation of license will be imposed provided that the licensee makes application to this Department on or before April 29, 1942 for a special permit as above indicated.

ALFRED E. DRISCOLL,
Commissioner.

12. DISCIPLINARY PROCEEDINGS - AIDING AND ABETTING A RETAIL LICENSEE IN THE UNLAWFUL SALE OF ALCOHOLIC BEVERAGES IN VIOLATION OF R. S. 33:1-52 - LICENSEE GUILTY - NO SUSPENSION BECAUSE OF LAPSE OF TIME - VALIDATING PERMIT REQUIRED.

In the Matter of Disciplinary Proceedings against GILLHAUS BEVERAGE CO., INC., 95 Temple Avenue, Hackensack, N. J., Holder of Plenary Wholesale License W-14.	CONCLUSIONS AND ORDER

Jerome B. McKenna, Esq., Attorney for Department of Alcoholic Beverage Control.
Gillhaus Beverage Co., Inc., Pro Se, by Harry C. Harper and Henry Gillhaus.

BY THE COMMISSIONER:

This is a companion case to Re Teaneck Beverage Co., Inc., Bulletin 505, Item 11, just decided. In this case charges were also preferred on April 12, 1938, and, although heard on April 27th of the same year, the proceedings were still pending when the present Commissioner took office.

The charge served upon the licensee alleged that on divers dates between July 8, 1937 and December 10, 1937, it violated the provisions of Section 50 of the Alcoholic Beverage Control Act (now R. S. 33:1-52) by aiding and abetting Teaneck Beverage Co., Inc., a licensed retailer, to make unlawful sales of alcoholic beverages, in that Teaneck Beverage Co., Inc. sold such beverages to the defendant-licensee.

The licensee pleaded guilty to the charge.

The facts are set forth in Re Teaneck Beverage Co., Inc., supra, and, for the reasons stated therein, these proceedings will be disposed of in similar manner.

Accordingly, it is, on this 24th day of April, 1942,

ORDERED, that the proceedings be and they hereby are terminated. No penalty of suspension or revocation of license will be imposed provided that the licensee makes application to this Department on or before April 29, 1942, for a special permit to validate its unlawful purchases from Teaneck Beverage Co., Inc. at a fee to be fixed commensurate with the quantity of alcoholic beverages involved.

ALFRED E. DRISCOLL,
Commissioner.

13. DISCIPLINARY PROCEEDINGS - SUSPENSION FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT ON EXPIRATION OF 25 DAYS AND THE TRANSFER OF LICENSE TO A BONA FIDE AND QUALIFIED PURCHASER AND APPROVAL BY MUNICIPALITY - 46 DAYS ELAPSED - PETITION BY TRANSFEREE TO LIFT AS AFORESAID GRANTED.

In the Matter of Disciplinary Proceedings against LOUIS KOVACS, 67 Center St., Clifton, N. J., Holder of Plenary Retail Consumption License C-89, issued by the Municipal Council of the City of Clifton.	ON PETITION ORDER

Louis P. Bertoni, Esq., Attorney for Petitioners, Louis Kovacs and Rose Falcetta.

BY THE COMMISSIONER:

On March 3, 1942 I suspended the license of the defendant herein for the balance of its term, effective March 9, 1942, after he had been found guilty of charges alleging, among other things, that he had permitted certain undisclosed persons to exercise the privileges of his license. In the order suspending the license leave was given to lift the suspension after the expiration of twenty-five days from March 9, 1942, upon showing a correction of the unlawful situation. Re Kovacs, Bulletin 498, Item 4.

Petitions have now been presented to me by Louis Kovacs and Rose Falcetta, from which it appears that the license and business conducted thereunder have been sold to Rose Falcetta and that she is the only person now interested in said license and business. It also appears that the Municipal Council of the City of Clifton has transferred the license to Rose Falcetta on April 21, 1942 subject to the entry of an order by me lifting the suspension heretofore imposed against Louis Kovacs.

Since it appears that the unlawful situation has now been corrected and that more than twenty-five days have elapsed since the suspension became effective,

It is, on this 24th day of April, 1942,

ORDERED, that the suspension heretofore imposed against Plenary Retail Consumption License C-89, issued by the Municipal Council of the City of Clifton for premises 67 Center St., Clifton, N. J., be lifted, and it is hereby restored to full force and operation, effective immediately.

Alfred E. Driscoll
Commissioner.