

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

BULLETIN 545

JANUARY 5, 1943.

1. APPELLATE DECISIONS - PATERSON GRILL OWNERS ASSOCIATION v. PATERSON, GLAZER AND SPESHOCK.

APPELLATE DECISIONS - WHITE v. PATERSON, GLAZER AND SPESHOCK.

PATERSON GRILL OWNERS ASSOCIATION, )

Appellant, )

-vs- )

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE )

CONTROL OF THE CITY OF PATERSON, )

IRVING GLAZER and MARY SPESHOCK, )

Respondents. )

ON APPEAL

----- )

MARIA WHITE, )

APPELLANT, )

CONCLUSIONS AND ORDER

-vs- )

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE )

CONTROL OF THE CITY OF PATERSON, )

IRVING GLAZER and MARY SPESHOCK, )

Respondents. )

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William C. Egan, Esq. and Lawrence Diamond, Esq., Attorneys  
for Appellants.

George Dimond, Esq., Attorney for the Respondent, Municipal  
Board of Alcoholic Beverage Control of the City of Paterson.

Abraham Brenman, Esq., Attorney for Respondent-Licensees.

BY THE COMMISSIONER:

It was stipulated by all interested parties that these appeals, since they involve the same issues, may be heard and decided together.

These appeals are from the granting of a transfer of the plenary retail consumption license of Irving Glazer and Mary Speshock from 130-130A Broadway to 1107 Madison Avenue, Paterson.

No objectors appeared at the meeting of the Board held on August 12, 1942 at which the application was granted. Shortly thereafter, however, when a sign was posted on the new premises announcing the opening of a tavern there, the people in that vicinity circulated a petition opposing the location of a consumption establishment at 1107 Madison Avenue, Paterson.

On September 8, 1942 the objectors appeared before the Board. Their protests were based upon their contentions that there already existed sufficient licenses in the vicinity of the new site; that the licensees, because they twice suffered a sus-

pension of their license, are not fit persons to be given the privilege of transferring their license; and that the new location is in close proximity to the Wright Aeronautical Co., a defense factory, and several nearby encampments of anti-aircraft squads. Although it heard these protests, the Board correctly concluded that, since the transfer had already been granted, it had lost jurisdiction in the matter and the only remedy of the objectors was to appeal to the Commissioner. Dilkes v. Pancoast, 53 N.J.L. 553 (Sup.Ct. 1891); Plager v. Atlantic City, et al., Bulletin 80, Item 11; Emmons, et als, v. Eatontown, et als, Bulletin 362, Item 7; Parker v. Newark, et als, Bulletin 425, Item 12.

At this latter meeting, however, it became apparent that the granting of the transfer by the Board on August 12, 1942 was based upon a misconception of the law. In explaining to the protestants why the transfer had been granted, one of the members of the Board said: "When the hearing on the transfer came up, there was absolutely no one here to protest. The Board can only act upon a transfer and then refuse if there are protests on the part of the neighbors if there is any reason why a license should not be granted. That particular evening, there was no one from Madison Avenue or that vicinity protesting the transfer, so, under the circumstances we couldn't do anything else but grant the transfer. If you took it up with the ABC in Newark, Mr. Driscoll would grant the transfer due to the fact that there was no one protesting the application. It is not our fault that the transfer was granted. If you people had read the paper, saw the 'ads' in there and appeared before us, we certainly would have given the matter consideration. I want you to know that it was not our fault that the transfer was granted and same was granted because no one was here."

Such, of course, is not the law. An issuing authority is not only authorized, but is duty-bound, to investigate all applicants and to inspect all premises sought to be licensed. R.S. 33:1-24. These obligations are imposed upon all issuing authorities by statute and are in nowise conditioned upon whether there are or are not any objections made against the application. The determination of an applicant's character and worthiness, the suitability of a premises as such and its location, and the merits of the application generally, are all matters which the local authority must, in the first instance, determine in the exercise of sound discretion.

Thus, among other things, the Board should have passed upon whether the three taverns already located in the immediate vicinity of the premises to which the license was transferred were sufficient to service the needs of the residents in that neighborhood; whether, in view of the two suspensions received by these licensees (one in February 1942 for sixty days and the other in July 1942 for seventy days), the privilege of transfer should have been accorded to them; and whether it was desirable to license another tavern in such close proximity to the defense plant and anti-aircraft encampments.

Since it is manifest that in disposing of the matter below the Board gave no consideration to the merits of the application, the case must be remanded to the Board in order that it may make its personal findings upon all of the pertinent issues. Cf. U.S. Pipe & Foundry Co. v. Burlington, Bulletin 57, Item 12; Parker v. Liquor Stores, Inc. v. Jersey City, Bulletin 77, Item 12; White Castle, Inc. v. Clifton, Bulletin 97, Item 14; Dunster v. Bernards, Bulletin 99, Item 1; Merritt v. Tabernacle, Bulletin 156, Item 3; Schwartz, et al v. Carteret, Bulletin 250, Item 4; Bolluscio v. Newark, Bulletin 273, Item 15; Vasa Temple v. Kearny, Bulletin 509, Item 6; Turetsky v. Garfield, Bulletin 524, Item 3. In connection therewith, the Board should adopt the necessary procedure

for fixing a time and place for hearing and the issuance of proper notice to the appellants, the respondent-licensees and other interested parties, and thereupon to certify and report the resultant determinations made upon each of said issues to the Commissioner for further action in the premises.

Accordingly, it is, on this 28th day of December, 1942,

ORDERED that this case be and the same is hereby remanded to the respondent Municipal Board of Alcoholic Beverage Control of the City of Paterson for further and immediate action in accordance with the foregoing conclusions.

ALFRED E. DRISCOLL,  
Commissioner.

2. APPELLATE DECISIONS - EVANS-BELMAR HOTEL, INC. v. BELMAR.

EVANS-BELMAR HOTEL, INC.,	)	
a New Jersey corporation,	)	
	)	
Appellant,	)	On Appeal
-vs-	)	
	)	CONCLUSIONS AND ORDER
BOARD OF COMMISSIONERS OF THE	)	
BOROUGH OF BELMAR,	)	
	)	
Respondent.	)	
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Thomas C. Madigan, Esq., Attorney for Appellant.  
Joseph Silverstein, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from denial of a plenary retail consumption license for premises located at 112 Fifth Avenue, Borough of Belmar.

At the hearing scheduled to be held herein, no one appeared on behalf of respondent or as an objector to the issuance of the license. However, there was presented at said hearing a stipulation, entered into between the attorney for appellant and the attorney for respondent. This stipulation, after reciting that appellant is fully qualified and that it had complied with all statutory requirements as to the issuance of the license, reads as follows:

"3. On the 8th day of December, 1942, respondent adopted a resolution denying the application, which resolution reads as follows:

'Whereas, the Evans-Belmar Hotel, Inc. of 112 Fifth Avenue, Belmar, New Jersey, has made application for a plenary retail consumption license for its premises, and

'Whereas, other formal and informal applications have been made to the Board of Commissioners in the business area, which have been refused, and

'Whereas, the number of licensed premises in the Borough have been filled in accordance with the ordinance with the exception of the Belmar Casino,

'Now, therefore, be it resolved that the license application of Evans-Belmar Hotel, Inc. be refused for the reasons aforesaid.'

"4. The Borough Ordinance, as amended and now in force, provides that the number of plenary retail consumption licenses issued and outstanding in the Borough of Belmar at the same time shall not exceed eight. The number of such licenses now actually issued and outstanding is seven.

"5. Respondent is reserving the eighth and only remaining license not issued and outstanding for the use of the Belmar Casino premises. The Belmar Casino premises are now vacant and have been vacant for upwards of a year.

"6. The only question at issue is whether respondent is permitted by law and the regulations of the Department of Alcoholic Beverage Control to reserve the license in question for the Belmar Casino premises, which are now vacant, and under such circumstances, refuse the application of an otherwise eligible applicant on the ground that there is no license available under the ordinance."

The early history of the limiting regulations adopted in the Borough of Belmar as to the issuance of plenary retail consumption licenses is set forth in Gallucio v. Belmar, Bulletin 255, Item 8. It appears from the Conclusions entered therein that, on June 16, 1936, respondent adopted a resolution which recited that eight plenary retail consumption licenses had been issued and resolved "that no new applications for the sale of alcoholic beverage license be considered under any plan whatsoever until a vacancy shall arise." It further appears from said Conclusions that, at the time the resolution of June 16, 1936 was adopted, one of the eight outstanding consumption licenses had been issued to Belmar Casino which operated during the summer of 1936. It further appears from said Conclusions that, on February 2, 1937, respondent adopted a further resolution which recited that, whereas the Belmar Casino temporarily closed its place of business and surrendered its license, and whereas said Casino premises were always licensed in the years prior to Prohibition, and since the repeal of Prohibition, it was resolved "that no additional plenary retail consumption alcoholic beverage license shall be granted in the Borough of Belmar unless the said application shall pertain to the Belmar Casino premises, for which place said vacancy has been reserved."

In May 1938 respondent submitted to Commissioner Burnett for his approval copy of a proposed ordinance which respondent subsequently approved on May 17, 1938. After commenting upon the proposed ordinance, the Commissioner said in Re Joeck, Bulletin 243, Item 4:

"I note that \*\*\* I have not heretofore written to you in regard to the resolution adopted by the Board on February 2, 1937, providing for an exception from your limitation in favor of the Belmar Casino. As this resolution will also be repealed by the enactment of the proposed ordinance, I am not considering it now. I merely point out that the exception permitting the issuance of a new license, notwithstanding the limitation, to the Belmar Casino was without any authority in law. Class legislation arbitrarily discriminating against some and in favor of others is prohibited. In general, all those similarly situated must be treated alike. There is no reason why the Belmar Casino should be entitled to a liquor license any more than any other applicant. If there is a quota, it will have to take its chances in making application

along with the rest. The exception is without legal foundation and could not be sustained."

The proposed ordinance to which the Commissioner referred in Re Joeck, supra, was approved by respondent on May 17, 1938, and is known as Ordinance #320 of the Borough of Belmar. Section 1 of Ordinance #320 provided as follows:

"1. The number of plenary retail consumption licenses issued and outstanding in the Borough of Belmar at the same time shall not exceed seven (7)."

On May 17, 1938, the Belmar Casino was unlicensed; seven plenary retail consumption licenses were in existence for other premises and, hence, the fixed quota was exhausted. It was for this reason that the action of respondent, in denying another plenary retail consumption license to appellant in the case of Gallucio v. Belmar, supra, was affirmed upon appeal.

It appears that subsequently respondent desired to issue an additional plenary retail consumption license for Belmar Casino. Accordingly, on May 28, 1940, it approved an amendment to Section 1 of Ordinance #320 whereby it increased the permissible number of plenary retail consumption licenses from seven to eight, and issued an additional license for the premises known as Belmar Casino. This is the Borough ordinance as amended and now in force, which is referred to in Paragraph 4 of the stipulation.

The evidence herein shows that the licensee operating at Belmar Casino closed his place of business in December 1941, and failed to apply for renewal of his license for the present fiscal year beginning July 1, 1942. At present there are seven plenary retail consumption licenses in existence and, hence, there is a vacancy under the Borough ordinance as amended.

Some of the statutes of the State of New Jersey which governed the issuance of licenses prior to Prohibition made exception in favor of "old places," thus apparently indicating a legislative intent to create preferences in favor of certain licensed premises. Thorman v. Haddon, Bulletin 82, Item 5. However, the Alcoholic Beverage Law refers to the licensing of individuals and there is nothing contained therein which would indicate a legislative intent to favor certain premises. Under the Alcoholic Beverage Law, no one place is entitled to a license more than another. Re Konesky, Bulletin 217, Item 7. Cf. Walsh v. Bradley, 121 N.J.Eq. 359; Lackow v. Alper, 130 N.J.Eq. 588.

The evidence herein shows that appellant has applied for a license for a three-story building on a plot of ground 100 x 150 feet, wherein it intends to operate a hotel containing thirty-one rooms and a restaurant accommodating two hundred twenty-five people. Appellant's premises are located more than a half-mile from the nearest premises for which a plenary retail consumption license has been issued.

Upon the facts presented herein, I agree with the conclusion reached in Re Joeck, supra, that the act of respondent, in attempting to reserve the eighth and only remaining license to Belmar Casino, is unreasonable and discriminatory. Since the issue herein has been restricted to that question alone, I must reverse respondent's action.

It should be noted that nothing herein contained prevents a local issuing authority from adopting a plan to issue licenses so that proper provision may be made for each section of the municipality. Sadovsky v. Millstone, Bulletin 120, Item 4; Skeba v. Millstone, Bulletin 274, Item 1; Re Schenck, Bulletin 389, Item

12. Further, there is nothing contained herein which conflicts in any way with the numerous cases which have decided that a local issuing authority may refuse a license where it appears that sufficient licenses have already been issued in the same vicinity. Neither of the issues discussed in this paragraph has been raised in the present appeal.

Accordingly, it is, on this 28th day of December, 1942,

ORDERED that the action of respondent be and the same is hereby reversed, and it is directed to issue to appellant forthwith the license for which it has applied.

ALFRED E. DRISCOLL,  
Commissioner.

3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO WOMEN OVER THE BAR, IN VIOLATION OF LOCAL ORDINANCE - 5 DAYS SUSPENSION, LESS 2 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

MARGARET BRUTEN, ADMINISTRATRIX,  
ESTATE OF LEWIS BRUTEN,  
T/A BRUTEN'S CAFE,  
773 Central Avenue,  
Camden, N. J.

CONCLUSIONS  
AND  
ORDER

Holder of Plenary Retail Consumption License C-54, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

Margaret Bruten, Administratrix, Pro Se.  
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads guilty to the following charge:

"On August 30, 1942, at about 1:45 A.M., you sold alcoholic beverages to women directly over your bar, in violation of Section 10 of an Ordinance concerning alcoholic beverages adopted by the Board of Commissioners of the City of Camden on December 27, 1934 as amended June 27, 1935."

The departmental file discloses that on August 30, 1942, at 1:45 A.M., detectives of the Camden Police Department were in the vicinity of the licensed premises. They observed three women being served alcoholic beverages by the bartender. Upon entering the licensed premises, they noted two women drinking beer and one woman drinking whiskey at the bar. Shortly thereafter statements were taken by investigators of the Department of Alcoholic Beverage Control from the three women who admitted having had alcoholic beverages served to them over the bar at the licensed premises.

The defendant has no previous record and I am therefore imposing a penalty of suspension of her license for a period of five days with a remission of two days for the guilty plea.

Accordingly, it is, on this 28th day of December, 1942,

ORDERED that Plenary Retail Consumption License C-54, heretofore issued to Margaret Bruten, Administratrix, Estate of Lewis

Bruten, trading as Bruten's Cafe, by the Municipal Board of Alcoholic Beverage Control of the City of Camden for premises 773 Central Avenue, Camden, be and the same is hereby suspended for a period of three (3) days, commencing at 2:00 A.M., January 5, 1943 and concluding at 2:00 A.M., January 8, 1943.

ALFRED E. DRISCOLL,  
Commissioner.

- 4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES FROM DELIVERY TRUCK UPON THE PUBLIC HIGHWAY AND SALE OF ALCOHOLIC BEVERAGES FROM TRUCKS STATIONED ON NON-LICENSED PREMISES, IN VIOLATION OF R.S. 33:1-2 - 20 DAYS' SUSPENSION, LESS 5 FOR PLEA OF NON VULT.

SEIZURE - FORFEITURE PROCEEDINGS - FACTS EXAMINED - (LICENSEE CONVICTED AND FINED \$100.00 IN CRIMINAL COURT) - SEIZED ARTICLES ORDERED RETURNED UPON PAYMENT OF COSTS OF SEIZURE AND STORAGE.

In the Matter of Disciplinary Proceedings against )

COLUMBIA WINE & LIQUOR CORP., )  
1300 Summit Avenue, )  
Union City, N. J. )

Holder of Plenary Retail Consumption License C-118 for the year 1941-42 and now holder of Plenary Retail Consumption License C-118 for the current fiscal year for premises at )

1300-1302 Summit Avenue, )  
Union City, N.J., )

CONCLUSIONS

both licenses issued by the Board of Commissioners of the City of Union City. )

AND

----- )

ORDER

Case No. 6250 )  
In the Matter of the Seizure, on April 19, 1942, of a Ford truck and a quantity of alcoholic beverages found therein, at 165 Ridge Avenue, in the Borough of Park Ridge, County of Bergen and State of New Jersey. )

Columbia Wine & Liquor Corp., by Reynold F. Venusti, President, and Henry P. Venusti, Secretary and General Manager. Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

These cases involve the same facts, hence may be decided together.

Defendant has pleaded non-vult to the following charges:

"1. On or about April 19, 1942, you sold alcoholic beverages not pursuant to and within the terms of your plenary retail consumption license issued for premises 1300 Summit Avenue, Union City, N.J., in that you sold one case of beer

and one gallon of wine in a garage at 165 Ridge Avenue, Park Ridge, N.J.; said sale being in violation of R. S. 33:1-2.

"2. On divers days during the two years prior to April 19, 1942, you sold, distributed and transported alcoholic beverages in and about Teaneck, Englewood, Bergenfield, Dumont, New Milford, Harrington Park, Emerson, Woodcliff Lake, Park Ridge, Montvale, Ridgewood and Ramsey, N. J., not pursuant to and within the terms of your aforesaid plenary retail consumption license in that you transported alcoholic beverages in and about said municipalities and sold such beverages to customers without prior orders therefor having been received; said sale, distribution and transportation being in violation of R.S. 33:1-2.

"3. On divers days during the two years prior to April 19, 1942, you directly and indirectly solicited from house to house the purchase of alcoholic beverages and allowed, permitted and suffered such solicitation, in and about the aforesaid municipalities, in violation of Rule 3 of State Regulations No. 20.

"4. On or about April 19, 1942 and on divers days prior thereto, you knowingly aided and abetted the sale, distribution and transportation of alcoholic beverages in and about Park Ridge, N.J., by Reynold F. Venusti without license or permit contrary to R.S. 33:1-2, in violation of R.S. 33:1-52."

On April 19, 1942, an investigator of the Department of Alcoholic Beverage Control called at Reynold F. Venusti's home located at 165 Ridge Avenue, Borough of Park Ridge. The investigator told Mr. Venusti that he desired to purchase a case of beer and a gallon of wine. Mr. Venusti took the investigator to the garage at the rear of his home and there sold him a case of beer and a gallon of wine from a larger quantity of alcoholic beverages which were in a duly licensed truck owned by Columbia Wine & Liquor Corp. All of the alcoholic beverages then on the truck were apparently tax-paid and had been stored over-night in the garage while in the process of being delivered from or returned to the licensed premises in Union City. This was permissible under the ruling in Re Majestic Wine & Spirits Inc., Bulletin 265, Item 15. After the sale, the investigator summoned another investigator of this Department and members of the Park Ridge Police. Mr. Venusti was arrested. The truck and all the alcoholic beverages located thereon were seized pursuant to R.S. 33:1-66(b) and (c) because the sale had been made off the licensed premises in violation of R.S. 33:1-2.

At the time of the arrest and seizure Reynold F. Venusti signed a statement wherein he admitted that he had sold alcoholic beverages from his garage on five or six previous occasions. He also stated that he carried

"a few extra bottles of whiskey on the truck because sometime when I make deliveries people ask for an extra bottle of whiskey or wine etc. and I like to have it so that I can sell it to them right then and there and not make an extra trip. These people are really customers and I know them for years. I do this selling from the truck to accommodate my customers during deliveries."

Defendant frankly admits that the sale made in the garage was illegal as set forth in charges (1) and (4) because the sale was not made on the licensed premises. Although it has also pleaded

non vult to charges (2) and (3), defendant alleges, in mitigation, that Reynold F. Venusti never solicited "from house to house" but states that "in a few instances, he approached prospective customers only on the request and recommendation of an established customer, after having been informed that the prospective customer desired to see him." Even on the facts set forth by defendant, it appears that there was solicitation from house to house which is forbidden by Rule 3 of State Regulations No. 20.

As I said in Re Goncharoff, Bulletin 544, Item 1:

"The sale of alcoholic beverages by a licensee directly from a delivery vehicle, either to a customer in the street or at his home, constitutes a peddling of alcoholic beverages and is prohibited by the Alcoholic Beverage Law.

"Retail licensees must confine their sales of alcoholic beverages to the licensed premises. Re Cousins Co., Inc., Bulletin 288, Item 3. There can be no perambulating licensed premises from which alcoholic beverages may be sold. Re Anderson, Bulletin 465, Item 5; Re Carlton, Bulletin 195, Item 7. Retail licensees are not permitted even to solicit from house to house for future delivery of alcoholic beverages. State Regulations No. 20, Rule 3.

"The privilege afforded retail licensees under R. S. 33:1-28, to use their licensed vehicles to deliver their customers' purchases, may not be used as a means to cover peddling of alcoholic beverages."

This case is to be distinguished, however, from the Goncharoff case in that the present defendant was virtually using his garage as a substation for his licensed premises. These premises, it is to be noted, are in Union City. The garage, wherein defendant was not privileged to conduct a licensed business, is in the Borough of Park Ridge.

If the defendant desired to do a licensed business in the Borough of Park Ridge, he should have first sought and obtained a license from the issuing authorities of that Borough in the manner provided by law. Defendant's use of his garage without benefit of license constitutes a serious violation.

These facts, together with the apparent scope of defendant's sales from the delivery truck, require a more severe penalty than that given in the cited case. I shall suspend the defendant's license for twenty days, less five days for the guilty plea.

Although the disciplinary proceedings were instituted during the licensing year which expired on June 30, 1942, they do not abate but remain fully effective against defendant's renewal license for the current (1942-43) year. State Regulations No. 15.

At the same time that the disciplinary proceedings were instituted, seizure proceedings were brought pursuant to the provisions of Title 33, ch. 1, of the Revised Statutes, to determine whether the seized Ford truck and the alcoholic beverages should be forfeited.

The Ford truck was returned to Columbia Wine & Liquor Corp, upon payment, under protest, pursuant to R.S. 33:1-66, of its appraised value of \$300.00. Licensee has stipulated that the Commissioner should determine in these proceedings whether this money should be returned to it. Likewise, the licensee, who is the owner of the seized alcoholic beverages, seeks their return.

The sale of the alcoholic beverages at a place other than the licensed premises was contrary to the terms of defendant's license and hence unlawful. The seized alcoholic beverages are, therefore, illicit. R.S. 33:1-1(i); R.S. 33:1-2. The law further provides (R.S. 33:1-66) that the vehicle containing the same is subject to forfeiture.

I am authorized to return seized or forfeited property where it appears to my satisfaction that the person seeking its return has unwittingly violated the law while acting in good faith. R.S. 33:1-66(e). In the present case I am inclined to give the licensee the benefit of any reasonable doubt consistent with an adequate penalty in the case. Suspension of the license and Reynold F. Venusti's conviction and fine of \$100.00 in the criminal court for this offense are substantial penalties. I shall, therefore, accept as true the sworn statements of Reynold F. Venusti and Henry P. Venusti, Secretary and General Manager of defendant-corporation, that the President and the Corporation acted in good faith and did not intend to violate the law. Hence, if the costs incurred in the seizure and storage are paid, the money on deposit covering the value of the truck, and also the alcoholic beverages, will be returned to Columbia Wine and Liquor Corp.

Accordingly, it is, on this 28th day of December, 1942,

DETERMINED AND ORDERED that if, on or before the 11th day of January, 1943, the costs of seizure and storage in the case are paid, the seized alcoholic beverages itemized in Schedule "A" hereinafter set forth shall be returned to Columbia Wine & Liquor Corp.; and it is further

ORDERED that, upon payment of such costs, the sum of \$300.00 deposited in this case shall be returned to the Columbia Wine & Liquor Corp.; and it is further

ORDERED that plenary retail consumption license C-118, issued for the present fiscal year by the Board of Commissioners of the City of Union City to Columbia Wine & Liquor Corp., for premises 1300-1302 Summit Avenue, Union City, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 3:00 A.M. January 4, 1943 and terminating at 3:00 A.M. January 19, 1943.

ALFRED E. DRISCOLL,  
Commissioner.

SCHEDULE "A"

- 23 - jugs of assorted wines
- 3 - jugs of vermouth
- 3 - 1-pint bottles of whiskey
- 2 - 1/2-gallon bottles of whiskey
- 1 - 1/2-gallon bottle of rum
- 11 - quarts of assorted alcoholic beverages
- 12 - bottles of beer

- 5. DISCIPLINARY PROCEEDINGS - PERMITTING ALIEN HOLDER OF EMPLOYMENT PERMIT TO SELL ALCOHOLIC BEVERAGES, IN VIOLATION OF RULE 3 OF STATE REGULATIONS NO. 11 - EMPLOYMENT OF FEMALE ON LICENSED PREMISES, IN VIOLATION OF LOCAL REGULATION - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

DISCIPLINARY PROCEEDINGS - SALE AND SERVICE BY ALIEN PERMITTEE CONTRARY TO CONDITIONS OF EMPLOYMENT PERMIT, IN VIOLATION OF R.S. 33:1-26 - 30 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

MICHAEL HANDZEL,  
t/a MIKE'S TAVERN,  
Southerly side of State Hwy. #10,  
Hanover Township,  
P.O. Whippany, N.J.

Holder of Plenary Retail Consumption License C-14 issued by the Township Committee of the Township of Hanover.

CONCLUSIONS

AND

In the Matter of Disciplinary Proceedings against

ORDER

MARY A. HANDZEL,  
Route #10,  
Whippany, N.J.

Holder of Employment Permit No. 445, issued by the State Commissioner of Alcoholic Beverage Control.

William C. Egan, Esq., Attorney for Defendant-Licensee and Defendant-Permittee.  
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee has pleaded guilty to charge (1) alleging that he permitted Mary Handzel, the holder of an employment permit for a person disqualified by non-citizenship, to sell alcoholic beverages, in violation of R.S. 33:1-26 and Rule 3 of State Regulations No. 11. He also pleaded guilty to charge (2) alleging that he employed a female in and upon his licensed premises in violation of a Resolution adopted July 11, 1938 by the Township Committee of the Township of Hanover.

Defendant-permittee pleaded guilty to a charge of selling alcoholic beverages contrary to the terms and conditions of her employment permit.

On October 23, 1942, investigators of the Department of Alcoholic Beverage Control visited the licensed premises of Michael Handzel and found his wife, Mary Handzel, tending bar. Mary Handzel, a national of Czechoslovakia, held an employment permit which provided that she "shall not in any manner whatsoever, serve, sell or solicit the sale ... of any alcoholic beverages." The Resolution of the Township Committee which is referred to in charge (2) provides that "no female shall be em-

ployed in or upon premises for which Plenary Retail Consumption license has been issued except bona fide hotels and restaurants." Michael Handzel does not conduct a hotel or restaurant.

Since no previous record appears against the licensee, I shall suspend his license for five days on each charge, less five days for the guilty plea, making a net suspension of five days. I shall suspend the permit for thirty days, less five days for the guilty plea, making a net suspension of twenty-five days.

Accordingly, it is, on this 29th day of December, 1942,

ORDERED that Plenary Retail Consumption License C-14, heretofore issued by the Township Committee of the Township of Hanover to Michael Handzel, t/a Mike's Tavern, for premises on Southerly side of State Hwy. #10, Hanover Township, be and the same is hereby suspended for five (5) days commencing at 2:00 A.M. January 4, 1943, and terminating at 2:00 A.M. January 9, 1943; and it is further

ORDERED that Employment Permit No. 445, heretofore issued to Mary A. Handzel by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for twenty-five (25) days commencing at 2:00 A.M. January 4, 1943, and terminating at 2:00 A.M. January 29, 1943.

ALFRED E. DRISCOLL,  
Commissioner.

6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R.S. 33:1-77 - AGGRAVATING CIRCUMSTANCES - PREVIOUS RECORD - 60 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against )

TULLIO EGIZI, )  
t/a High Speed Line Cafe, )  
232-234 Stevens Street, )  
Camden, N.J. )

CONCLUSIONS  
AND  
ORDER

Holder of Plenary Retail Consumption License C-53, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden. )  
)  
)

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Frank M. Lario, Esq., Attorney for Defendant-Licensee.  
William F. Wood, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to the following charges:

"1. On or about August 19 and 28, 1942, you sold alcoholic beverages to Edith \_\_\_\_\_, a minor, in violation of R. S. 33:1-77.

"2. On or about the dates aforesaid, you sold, served and delivered, and allowed, permitted and suffered the service and delivery of alcoholic beverages to Edith \_\_\_\_\_, a person under the age of twenty-one (21) years, and allowed, per-

mitted and suffered the consumption of alcoholic beverages by such person upon the licensed premises, in violation of Rule 1 of State Regulations No. 20.

"3. On or about September 18, 1942, you sold alcoholic beverages to Margaret \_\_\_\_, Joseph \_\_\_\_, Ernest \_\_\_\_, Raymond \_\_\_\_ and Carl \_\_\_\_, minors, in violation of R.S. 33:1-77.

"4. On or about the date last aforesaid, you sold, served and delivered, and allowed, permitted and suffered the service and delivery of alcoholic beverages to Margaret \_\_\_\_, Joseph \_\_\_\_, Ernest \_\_\_\_, Raymond \_\_\_\_ and Carl \_\_\_\_, persons under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon the licensed premises, in violation of Rule 1 of State Regulations No. 20."

It is apparent that the sale of alcoholic beverages was made to minors on three occasions as specifically set forth in the charges.

In this case, six minors were served alcoholic beverages. Two of these minors were fourteen-year-old girls, one of whom had run away from her home in Virginia, to which she has been returned. The other girl is presently confined to the Camden County Detention Home. The four boys were all members of the Armed Forces.

I can give little weight to defendant's statement that one of the girls wore a wedding ring. I saw this girl at the hearing and, while it is true that she wore a wedding ring and did appear older than fourteen, nevertheless, no reasonable person could arrive at any conclusion other than that she was a minor.

I have repeatedly stated that the sale of liquor to minors is not only a serious violation of our law but a vicious practice. The law prohibiting the sale of alcoholic beverages to minors is equally applicable to those in uniform as well as to those in civilian clothes.

The defendant has a previous record. In March of 1941 his license was suspended for three days for the sale of alcoholic beverages on Sunday.

Because of the aggravating circumstances in this case and the defendant's previous record, I shall suspend his license for a period of sixty days, with a remission of five days for the guilty plea.

Accordingly, it is, on this 29th day of December, 1942,

ORDERED that plenary retail consumption license C-53, heretofore issued to Tullio Egizi, t/a High Speed Line Cafe, by the Municipal Board of Alcoholic Beverage Control of the City of Camden, for premises 232-234 Stevens Street, Camden, be and the same is hereby suspended for a period of fifty-five (55) days commencing at 2:00 A.M. January 5, 1943, and terminating at 2:00 A.M. March 1, 1943.

ALFRED E. DRISCOLL,  
Commissioner.

7. APPELLATE DECISIONS - CRESTON HOLDING COMPANY v. BELLEVILLE - APPLICATION TO MODIFY SUSPENSION GRANTED IN PART.

CRESTON HOLDING COMPANY, a New Jersey Corporation, trading as "THE FOUNTAIN", Appellant,

-vs-

BOARD OF COMMISSIONERS OF THE TOWN OF BELLEVILLE, Respondent.

On Application for Permission to Exercise Licensed Privileges during Suspension Period.

ORDER

STATEMENT OF THE CASE

This matter comes before me upon application of the licensee to defer from December 28, 1942 at 2:00 A.M. to January 4, 1943 the imposition of suspension heretofore ordered.

The record discloses that the Department of Alcoholic Beverage Control, on July 14, 1942, recommended to the Board of Commissioners of the Town of Belleville that disciplinary proceedings be instituted against the licensee. Hearing was held by the Board of Commissioners on September 22, 1942, at the conclusion of which the licensee was found guilty of the charges and its licensed privileges ordered suspended for a period of thirty-five days, effective September 27, 1942, at 3:00 A.M. and concluding on November 1, 1942 at 3:00 A.M. Within the time prescribed by law and pursuant to the statute, licensee appealed to me from the decision of the Commissioners. After consideration of all of the testimony the decision below was affirmed and this suspension reinstated, effective December 28, 1942, at 2:00 A.M.

It is now urged that the suspension, which includes New Year's Eve and Day, is far more harsh than was originally intended to have been imposed by the Board. When this application was originally presented to me, I stated:

"The local issuing authorities are given wide latitude in the imposition of penalties. It is my present opinion that I should neither change the procedure of this Department with respect to the handing down of decisions nor modify the penalty without the consent of the local issuing authority having been first sought and obtained.

"In other words, having affirmed the decision of the local Board on the merits unless good cause be shown to the contrary, I must necessarily abide by the Board's decision with respect to the penalty imposed."

Suspensions are imposed for the purpose of punishing licensees found guilty of violating the law and in the hope that the suspension will act as a deterrent against future violations by the particular licensee, as well as all others. The purpose of a suspension, in contrast to a revocation, is to punish, not to destroy. Those engaged in the administration of justice must, at all times, bear in mind that "fairness" and impartiality are essential to the proper administration of their duties.

In accordance with my suggestion, the applicant sought the consent of the local issuing authority to a lifting of the suspension between December 30, 1942 at 2:00 A.M. and January 4, 1943, at 2:00 A.M. It appears that the local Board has taken

no formal action due to the absence of a quorum but the majority of the members of the Board have indicated to me in writing that they had no objection to the relief requested.

After examining all of the facts I have reached the conclusion that the inclusion of New Year's Eve and Day within the suspension period has increased the punitive character of the penalty for the suspension imposed by the Board below. I note that the suspension period originally imposed by the Board of Commissioners did not include any holiday period comparable with the New Year period. New Year's Eve, in contrast to Christmas, a holy day, is regarded by many as the outstanding holiday of the year. A suspension that includes this period is undoubtedly far more severe than one imposed at any other period. Under the circumstances, I will permit the licensee to exercise the licensed privileges for the period commencing 12:00 o'clock noon on December 31, 1942 to 2:00 A.M. on January 2, 1943.

The licensee has asked permission to exercise his licensed privileges during the balance of this weekend. This I will not permit. Neither Saturday, January 2, 1943, nor Sunday, January 3, 1943 are comparable to New Year's Eve and Day and no sound reason has been presented why the licensee should be permitted to exercise his licensed privileges on these days.

Accordingly, it is, on this 31st day of December, 1942,

ORDERED that the suspension previously imposed herein and presently in effect shall be and is hereby lifted on December 31, 1942 at noon; that said suspension shall again become effective on January 2, 1943 at 2:00 A.M. and shall thereafter continue in effect until February 3, 1943 at 2:00 A.M.

ALFRED E. DRISCOLL,  
Commissioner.

- 8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - VIOLATION OCCURRED AND HEARING HELD PRIOR TO ANNOUNCED INCREASE IN PENALTIES - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against STEFAN FIDERKO, t/a STEVE'S CAFE, 1030 Thurman Street, Camden, N. J. Holder of Plenary Retail Consumption License C-32, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

CONCLUSIONS AND ORDER

Stefan Fiderko, Pro se. Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded guilty to a charge that, on Sunday, October 18, 1942, he sold, served and delivered alcoholic beverages during prohibited hours, in violation of the local ordinance of the City of Camden.

In Re Disbrow, Bulletin 540, Item 3, dated November 27, 1942, I recommended that in all future cases where a licensee sells during prohibited hours or is open during such hours for the evident purpose of "chiseling," the minimum penalty should be at least a fifteen-day suspension (with no more than five days remitted for the entry of a guilty plea in advance of the hearing).

In view of the fact that the violation in this case occurred before my announcement in Re Disbrow, supra, I shall not, in fairness to defendant, impose such increased penalty in this case. Defendant has no previous record. Under the circumstances, his license will be suspended for ten days, less five for the guilty plea. Re Morgan, Bulletin 542, Item 10.

Accordingly, it is, on this 29th day of December, 1942,

ORDERED that Plenary Retail Consumption License C-32, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Stefan Fiderko, t/a Steve's Cafe, for premises 1030 Thurman Street, Camden, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 A .M. January 4, 1943, and concluding at 2:00 A .M. January 9, 1943.

*Alfred E. Driscoll*  
Commissioner.

CHECKED BY no: 4