

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

BULLETIN 444

FEBRUARY 11, 1941.

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

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LICENSED PREMISES - MUST BE UNDER THE EXCLUSIVE POSSESSION AND CONTROL OF THE LICENSEE.

PREMISES TO BE LICENSED INADEQUATELY DESCRIBED - SUITABILITY OF PREMISES INADEQUATELY DETERMINED - CASE REMANDED TO MUNICIPALITY TO DETERMINE SUITABILITY OF PREMISES BEFORE FINAL CONSIDERATION ON THE MERITS.

MEYER ALBERTS and MOLLIE)
SCHOENFELD,)
)
Appellants,)
)
-vs-)
)
MAYOR AND COUNCIL OF THE)
BOROUGH OF ROSELLE and LENA)
GARFINKLE, INC., a corporation)
of New Jersey,)
)
Respondents)

ON APPEAL
ORDER

Philip Cohen, Esq., Attorney for Appellants.
Stanley W. Greenfield, Esq., Attorney for Respondent Lena Garfinkle, Inc.

This is an appeal from the granting of a plenary retail distribution license to respondent, Lena Garfinkle, Inc., for premises 1181 St. George Avenue, Roselle.

At the hearing it appeared that respondent, Lena Garfinkle, Inc., in its application for license specified 1181 St. George Avenue as the location of the premises to be licensed, stated that the entire building would not constitute the licensed premises and specified the portion thereof which would constitute the licensed premises as "part of store for sale and cellar for storage." It further appeared that Lena Garfinkle was the lessee of the entire store premises at 1181 St. George Avenue and that Lena Garfinkle, Inc. was the sub-lessee of that portion of the store premises described as ".....the window space nearest the corner of Rivington St. in her (Lena Garfinkle's) store facing on St. George Ave., together with the space adjoining said window of ten feet in length by eight feet from the wall, together with any shelving now in existence in said space." The license was certified to have been issued for premises "1181 St. George Ave., Roselle, N. J."

These facts appearing, the Hearer directed respondent Lena Garfinkle, Inc. to produce at an adjourned hearing (no one having appeared on behalf of respondent Borough Council), the members of the Borough Council to testify whether they intended to license the entire store premises at 1181 St. George Avenue or only the part thereof as to which Lena Garfinkle, Inc. had possession

and control, above specified. At the adjourned hearing the attorney for Lena Garfinkle, Inc. reported that he had undertaken to serve subpoenas upon the members of the Borough Council but upon learning from the Chairman of the Public Safety Committee (who had investigated the location of the premises sought to be licensed) that he had not reported to the other members of the Council as to the particular location of those premises, he abandoned further efforts to compel the testimony of the other Council members. He admitted that the members of the Borough Council did not know the location of the proposed licensed premises within the entire store premises. He further stated that he had filed an amended application for license which described as the premises to be licensed "ground floor, westerly window of store and space adjoining window 10' long and 8' from the wall together with entire cellar under the entire store" at 1181 St. George Avenue, but that the Borough Council refused to entertain such amended application for the reason that it felt that the pendency of the instant appeal deprived it of any jurisdiction in the premises, and that ".....as far as they were concerned it didn't make any particular difference whether the location of the premises was in one corner or another of the store and that they had not been apprised of any ruling that they should particularize the location."

The fact is that licensed premises must be particularized for purposes of administration and enforcement. Many provisions of the Alcoholic Beverage Law, the State Rules and Regulations and local regulations, prohibit certain conduct on the "licensed premises." If the licensed premises be not particularly described, how are those rules to be enforced? Furthermore, while an entire premises may be suitable for license, a mere portion of those premises may be unsuitable. Unless the issuing authority knows exactly what is sought to be licensed, it will be unable to determine the suitability of the premises for license. Again, before a license may be granted, the applicant therefor must have possession and control of the premises. Havenson v. South Orange, Bulletin 283, Item 8. Here it appears that the entire store was leased to Lena Garfinkle, individually, and that only a portion of the store premises was subleased by her to Lena Garfinkle, Inc. Since Lena Garfinkle, Inc. had possession and control over only part of the store premises, it would be clearly improper to grant to it a license covering the entire premises.

It is possible that in view of the small area of the premises sought to be licensed, respondent Borough Council, now that it is apprised of the necessity for particularizing the location of the licensed premises, may decide that the premises are not suitable for license. In that event it would be a futile gesture to determine the issues raised by this appeal only to have the whole matter made moot by the Council's determination that it improvidently granted the license in the first place. Decision on the merits is therefore reserved pending re-consideration of its action by respondent Borough Council.

Accordingly, it is, on this 6th day of February, 1941,

ORDERED, that the subject matter of this appeal be remanded to respondent Borough Council of the Borough of Roselle, with directions that it entertain the amended application of Lena Garfinkle, Inc. for license, at a public hearing at which appellants and the applicant shall be afforded opportunity to be heard, and thereafter determine whether in its opinion the premises possessed and controlled by Lena Garfinkle, Inc., and sought to be licensed by the amended application for license, are in fact suitable for license. Upon receipt of certification of respondents' disposition of the amended application for license, determination of the meritorious issues herein will be made.

E. W. GARRETT,
Acting Commissioner.

2. REGULATIONS NO. 34 - DISCRIMINATORY PRICES AND DISCOUNTS -
MANUFACTURERS AND WHOLESALERS WHO HAVE FILED STATEMENTS OF
PRICES AND DISCOUNTS.

February 6, 1941

Symbols Designating Types of Licenses

V - Plenary Winery
SL - Limited Distillery
SD - Supplementary Limited Distillery
R - Rectifier and Blender
W - Plenary Wholesale
WL - Limited Wholesale
WW - Wine Wholesale
EW - Plenary Export Wholesale
EWL - Limited Export Wholesale

John A. Allgair, 78-80 Main St., Sayreville, N. J.	W-44	Bardstown Distillery, Inc., 630 Fifth Ave., New York, N. Y.	W-47
American B. D. Company, 320 Market St., Paterson, N. J.	W-52 V-15	Bellows & Co., Inc., 629 Grove St., Jersey City, N. J.	EW-15
American Distilling Company, 135 East 42nd St., New York, N. Y.	EW-22	Belmont Distributing Co., 620-634 Market St., Newark, N. J.	W-3
American Distributing Co., 338 Plane St., Newark, N. J.	V-9	Bisceglia Bros. Wines Corp., 43-45 Harrison St., New York, N. Y.	WW-2
Antonio Antonacci, T/a Antonacci Wine Co., 609 Jefferson St., Hoboken, N. J.	V-35	Black Prince Company, Inc., 311 Kingsland Rd., Nutley, N. J.	R-46
K. Arakelian, Inc., d/b/a Madera Wineries & Distilleries, 601 West 26th St., New York, N. Y.	WW-17	Boller's Beverages, Inc., 435-441 East Jersey St., Elizabeth, N. J.	W-7
Lucien Ardin, Inc., 103-105 W. 52nd St., New York, N. Y.	WW-15	Browne Vintners Co., Inc., 50 Rockefeller Plaza, New York, N. Y.	W-51
Austin, Nichols & Co., Inc., 82 Poinier St., Newark, N. J.	W-64	California Grape Products Co., Ltd., 418-426 West 25th St., New York, N. Y.	WW-5
Baldwin Dew Distilling Co., W/S Lafayette-Sparta Rd., Sparta, N. J.	SD-17	Calvert Distillers Corp., 30 Rockefeller Plaza, New York, N. Y.	W-96
Antoni Bator, d/b/a Bator and Chmiel, 207-209 Florida St., Elizabeth, N. J.	W-29	Canada Dry Ginger Ale, Inc., 100 E. 42nd St., New York, N. Y.	W-32
		Canadian American Spirits Corp., 150 Bay St., Jersey City, N. J.	R-37

Carmelo Cannizzaro, 35 Aspen St., Passaic, N. J.	V-39	A. Diani & Co., 304-312 Highland Ave., Passaic, N. J.	V-5
Cannizzaro Wine Co., Inc., 438 Broome St., New York, N. Y.	WW-10	Adeline DiGiacomo & Joseph De Vecchis, T/a Frank DiGiacomo & Co., (Rear) 71 Cedar St., Paterson, N. J.	V-11
Canova Products Co., 310 - 12th St., Jersey City, N. J.	V-33	Distilled Liquors Import Co., Inc., 271 Madison Ave., New York, N. Y.	W-59
Capitol Wine & Liquor Co., Inc., 64-70 Oakland St., Trenton, N. J.	W-77	Drelich Bros. Inc., 62 Newark Ave., Jersey City, N. J.	W-75
Carstairs Distillers Corp., 405 Lexington Ave., New York, N. Y.	W-38	Duggan's Limited, 150 Bay St., Jersey City, N. J.	R-27
John B. Cattani, T/a John Cattani & Sons, 125-27 Central Ave., Union City, N. J.	V-7	Eastern Wine Corporation, 151st & Exterior Sts., Bronx, N. Y.	WW-8
James J. Clark, Inc., 733-35 Communipaw Ave., Jersey City, N. J.	EW-2	Esbeco Distilling Corp., 25 Jefferson St., Stamford, Conn.	W-33
Coles Street Winery, Vincent Di Stanlo, t/a 44 Coles St., Jersey City, N. J.	V-23	F. & A. Distributing Co., 235-241 West First St., Bayonne, N. J.	W-54
Columbia Sales Corporation, 517 - 60th St., West New York, N. J.	V-26	F-C-G Importers, Inc., 630 Fifth Ave., New York, N. Y.	W-93
Crescent Beverage Co., Inc., 110-114 W. Market St., Newark, N. J.	R-1	Federal Wine & Liquor Company, 315 Clendenny Ave., Jersey City, N. J.	V-25 EW-7
Fiore C., Angelo G., and Anthony Cribari, T/a B. Cribari & Sons, 963 Newark Ave., Elizabeth, N. J.	EW-14	Eugenio & Angelo Filippi, T/a Eugenio Filippi & Sons, 370 Kamena St., Fairview, N. J.	V-46
Dealers Liquor Co., Inc., 1426-30 So. 9th St., Camden, N. J.	W-67	Fleming & McCaig, Inc., 629 Grove St., Jersey City, N. J.	W-36
R. U. Delapenha & Co., 57 Laight St., New York, N. Y.	W-104	Fruit Industries, Ltd., T/a California Wine Asso- ciation, 270 Broadway, New York City.	WW-1
H. T. Dewey & Sons Co., 42-48 Liverpool Ave., Egg Harbor City, N. J.	V-16	Full Value Products Distri- butors Co., Stanley Butkus, t/a, 39-43 Komorn St. & 43 Barbara St., Newark, N. J.	W-65

Galsworthy, Inc., 292-300 Jelliff Ave., Newark, N. J.	V-34 W-1	Jersey National Liquor Corp., 243 Ellison St., Paterson, N. J.	W-37
V. Gambarelli & B. Davitto, T/a Gambarelli & Davitto, 629 Grove St., Jersey City, N. J.	V-14 EW-6	Henry Kelly Importing & Dist. Co., 413 W. 14th St., New York, N. Y.	W-46
Gillhaus Beverage Co., Inc., 95 Temple Ave., Hackensack, N. J.	W-14	Philip John Kelly, T/a Kelly Beverages, Kelly Place, Stanhope, Sussex Co., N.J.	W-26
Gordon O'Neil Co., Inc., 120 Sherman Ave., Jersey City, N. J.	R-42 EW-12	E. L. Kerns Co., 302-304 No. Broad St., Trenton, N. J.	EW-16
Greenspan Brothers Company, 369 Herbert St., Perth Amboy, N. J.	W-40	Herman A. Kluxen, 28 Fairview Ave., Madison, N. J.	V-1
John Gross, T/a Gross' Highland Winery, Leeds Rd., Galloway Twp., Absecon Highlands, N. J.	V-41	Laird & Co., Scobeyville-Phalanx Rd., Scobeyville, N. J.	SL-2
Hercules Liquor Products Corp., 360 Furman St., Brooklyn, N. Y.	W-24	Lamont-Forbes Co., Jacob S. Polefsky, t/a, 150 Bay St., Jersey City, N. J.	R-2
C. F. Heublein & Bro., 330 New Park Ave., Hartford, Conn. 99 Hudson St., New York City.	W-5	Liquor Distributors of America, 304-306 Jelliff Ave., Newark, N. J.	V-6
Home-Made Wine Co., Sebastian Minnella, d/b/a, 135 Hobart St., Hackensack, N. J.	V-4	Loewus & Co., Inc., G., 410 Frelinghuysen Ave., Newark, N. J.	V-8 EW-10
Hans Holterbosch, Inc., Bronx Terminal Market, Section 72, Bronx, N. Y.	WL-45	London & Co., Inc., 628 Henry St., Elizabeth, N. J.	R-14
Roy Hullings, Hartford Rd. & Rte #25, R. D. Riverside, N. J.	W-79	Majestic Wine & Spirits, Inc., 1423 Ferry Ave., Camden, N. J.	W-110
J. & J. Distributing Co., J. J. Blumberg, J. & J.L. Silberman, t/a, 312-318 Frelinghuysen Ave., Newark, N. J.	EW-17 WR-17	Theodore J. Meloro, 329 First St., Jersey City, N. J.	V-17
Wm. Jameson & Co., Inc., 630 Fifth Ave., New York, N. Y.	W-76	Meyer & Lange (Corp.), 432-6 Greenwich St., New York, N. Y.	W-58
		Antonio Miele, T/a Miele's Bonded Winery, 111 - 14th Ave., Newark, N. J.	V-31

McKesson Liquor Co., 759 Sumner Ave., Newark, N. J.	EW-9	F. Pirrone, Jr. & F. I. Pirrone, 92-94 Monroe St., Garfield, N. J.	V-29
Monarch Wine Co., Inc., 4500 Second Ave., Brooklyn, N. Y.	WW-11	Pleasant Valley Wine Co., Bath & Hammondsport Hwy, Rheims, N. Y.	WW-9
Monte Carlo Wine Company, Inc., 327 and rear of 329 Townsend St., New Brunswick, N. J.	V-37	Popper Morson Co., Inc., T/a Empire Liquor Asso- ciates, 48-52 Essex St., Jersey City, N. J.	R-4
Antonio Napolitano, 176 - 8th Ave., Newark, N. J.	V-40	Pure Wines, Inc., 500 - 90th St., No. Bergen, N. J.	V-38
National Distillers Products Corp., 120 Broadway, New York City. 629 Grove St., Jersey City, N. J.	EW-4	The Raritan Corporation, 385-87 Rector St., Perth Amboy, N. J.	R-21
National Wines & Liquors, Inc., 585-587 Main Ave., Passaic, N. J.	W-80	Joseph H. Reinfeld, Inc., 461-67 Frelinghuysen Ave., Newark, N. J.	EW-8
N. J. Apple Growers, Inc., Browntown-Cheesequakes Rd., Browntown (Madison Twp), N.J.	SL-9	L. N. Renault & Sons, Inc., Bremen Ave. & Fichte St., Egg Harbor City, N.J.	V-13
Padre Vineyard Co., 429 E. 8th St., Cuca Monga, Calif.	W-11	Roma Importing Co., Inc., 389-90 Market St., Newark, N. J.	V-28
Michelina Paradiso, 255-7 North 10th St., Newark, N. J.	V-10	Roma Wine Co., Inc., 601 W. 26th St., New York, N. Y.	W-27
Park & Tilford Import Corp., 485 Fifth Ave., New York, N. Y.	W-89	Saccone, Speed & Jenney, Inc., 303 Park Ave., New York, N. Y.	W-91
Peerless Liquor Dist. Inc., 11-13 Evergreen Ave., Neptune City, N. J.	W-18	San Gabriel Wine Co., Inc., 11-47 Borden Ave., Long Island City, N. Y.	WW-12
Penn Beverage Co., B. Stone, t/a, 611-15 Atlantic Ave., Atlantic City, N. J.	W-45	Schroeder Bros. Inc., 99 Hudson St., New York, N. Y.	WW-14
Phillipsburg Beverage Co., Fifth St., Morris Park, Lopatcong Twp, N. J.	W-98	John Schuster, T/a John Schuster & Son, 500-502 St. Louis Ave., Egg Harbor City, N.J.	V-18
Joseph Pingatore, 64-66 Fourth Ave., Long Branch, N. J.	W-70	Seagram Distillers Corp., 30 Rockefeller Plaza, New York, N. Y.	W-85
		Seggerman Nixon Corp., 82 Poinier St., Newark, N. J.	W-19

Munson G. Shaw Co., Inc., 400 Madison Ave., New York, N. Y.	WW-16	Trenton Beverage Company, T/a Trenton Wine Products Co., 438 South Broad St., Trenton, N. J.	V-30
Sonoma Vineyards Winery or Reinco, A. Vischia, t/a, 188-194 - 21st Ave., Paterson, N. J.	V-12	Trenton Beverage Co., 444 So. Broad St., Trenton, N. J.	W-48
Suffern Bottling Works, Inc., E. S. Franklin Turnpike, Mahwah, N. J.	W-78	U. S. Fruit Distillers, N. J. Route 33, Manalapan Twp., P.O. Box 208, Freehold, N.J.	V-22 SL-8
Summonte Wines, A. J. Marzulli, t/a, 168 Eighth Ave., Newark, N. J.	V-32	Valley of the Moon Wine Co., 878-880 Mt. Prospect Ave., Newark, N. J.	V-2
Sussex Co. Distillery Co., Inc., East of N.Y.S. & W.R.R. Station, Quarryville, Wantage Twp, N.J.	SL-5	Vincove Winery, V. F. Coviello, t/a, 1-5 Erie St., Paterson, N. J.	V-47
Fred D., Clarence W., Greyton H. Taylor, Flora T. Keeler & Lucy T. Zimmer, T/a The Taylor Wine Co., 437-39 Elizabeth Ave., Newark, N. J.	WW-6	Paul von Bosse, 600 Hamburg Ave., Egg Harbor City, N. J.	VL-2
Trenton Winery Co., A.P. Ricciani & S. Cristofari, t/a, 557 So. Clinton Ave., Trenton, N. J.	V-20	Hiram Walker, Inc., 630 Fifth Ave., New York, N. Y.	EW-21
Trentini's Winery, 635 Jackson St., Camden, N. J.	V-3	Julius Wile Sons & Co., Inc., 2 Park Ave., New York, N. Y.	W-97
		Samuel Wilen & Morris Wilen, T/a Wilen Brothers, 250 W. Cambria St., Philadelphia, Pa.	WW-18
		R. C. Williams & Co., Inc., 265 Tenth Ave., New York City.	W-21

* * * * *

3. 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 be-)
cause of a Conviction, pursuant)
to R. S. 33:1-31.2 (as amended)
by Chapter 350, P.L. 1938).)

CONCLUSIONS
AND ORDER

Case No. 128.)
-----)

In 1930 the petitioner, who was then a Municipal Police Commissioner, was indicted on a charge of conspiring, with others, to maintain and protect a house of prostitution, located in the municipality wherein he was Police Commissioner. The petitioner entered a plea of non vult to the charge and was sentenced to three months in jail and to pay a fine of \$1,000.00. A conspiracy of this character on the part of a public official expressly entrusted with the enforcement of the law clearly involves moral turpitude. Cf. Re Case No. 236, Bulletin 279, Item 2.

Petitioner now seeks removal of the disqualification, resulting from such conviction of a crime involving moral turpitude, pursuant to R. S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938).

During the past five years petitioner has resided with his family in a neighboring state where he has been engaged in business for himself as an automobile accessory distributor.

As evidence of his reputation and character, petitioner produced four witnesses, three of whom have known him while he was a resident of this State and one, a business man and resident of the State wherein petitioner now resides, who has known him during the past six or seven years. All four testified that petitioner's reputation is good and that, in their opinion, it would not be harmful to the public interest to permit him to become engaged in the alcoholic beverage business.

Petitioner's fingerprint record shows that the conviction in 1930 was the only time that he has ever been arrested or convicted of any crime. The Township Superintendent of Police and the Chief of Police of the two municipalities wherein petitioner has resided for the past five years report that their files disclose no record of any arrests or complaints against him.

It is concluded that petitioner has led a law-abiding life for the last past five years. I believe that applicant has rehabilitated himself since the commission of this crime more than twelve years ago, and hence conclude that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 6th day of February, 1941,

ORDERED, that his statutory disqualification because of the conviction herein described be and the same is hereby lifted in accordance with the provisions of R. S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938).

E. W. GARRETT,
Acting Commissioner.

4. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCIES IN PROOF APPARENTLY THROUGH NATURAL EVAPORATION. - PROCEEDINGS DISMISSED.

In the Matter of Disciplinary Proceedings against
 RAYMOND PRESNAL,
 7 Cecelia Street,
 Sayreville, N. J.,
 Holder of Plenary Retail Consumption License C-24 for the term expiring June 30, 1940 and now holder of Plenary Retail Consumption License C-29 for the current term, issued by the Borough Council of the Borough of Sayreville.
 -----)

CONCLUSIONS AND ORDER

Raymond Presnal, Pro Se.
 Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

The defendant-licensee was charged with possessing illicit alcoholic beverages in violation of R. S. 33:1-50.

It appears that on November 22, 1939 two investigators gauged and tested 14 open bottles of alcoholic beverages in the licensed premises. Upon preliminary field investigation 11 bottles appeared to conform to label specifications, and 3 bottles appeared to be under proof. Accordingly, the investigators seized and transmitted to the Department laboratory one quart bottle containing 19 ounces, labeled "Patrick's Apple Brandy 95 Proof", one quart bottle containing 6½ ounces labeled "Old Catskill Brand Straight Apple Brandy 90 Proof", and one gallon glass jug containing 43 ounces, labeled "Patrick's Apple Brandy 95 Proof."

The chemist's report of analysis disclosed that the quart bottle of Patrick's Apple Brandy was 3.7 proof short; the gallon jug of this product was 4.4 proof short; and the quart bottle of Old Catskill was 17.8 proof short. Other than the shortage in proof, all of the seized products appeared to conform to label specifications. Chemical analysis disclosed nothing which would indicate that the beverages were "refills" or that they had been diluted with water. Nor does it appear that these beverages were bootleg or in any wise harmful.

It further appears that both bottles of Patrick's Apple Brandy were purchased by the defendant-licensee at the opening of his business on December 24, 1935 and that the Old Catskill was purchased on February 1, 1936. The gallon jug of Patrick's Apple Brandy was opened immediately for use at the bar. The quart bottle of this product was opened some time in April or May 1936, and the quart bottle of Old Catskill was opened some time in the summer of 1936. It also appears that these are the only three bottles of apple brandy, open or sealed, that the licensee has ever had in his licensed premises. It is obvious, therefore, that apple brandy is not a big seller in this premises. The defendant-licensee denies that he or any of his employees has ever tampered with the liquor stock. While ordinarily a mere categorical denial of a charge by a licensee will not be given much weight, in the instant case the facts present no motive for "chiseling." A "chiseling" licensee generally tampers with his leading items. Here Scotch, rye and brandy, according to the licensee's inventory, far outsell applejack.

The licensee inferred that either the results of the chemist's analysis were incorrect or that the shortage in proof found occurred through natural causes.

The charge of possession of illicit alcoholic beverages by a licensee is a serious one. See Re Jacobs, Bulletin 315, Item 8; Re Tumen, Bulletin 316, Item 8; Re Orbach, Bulletin 406, Item 10; Re Perna, Bulletin 442, Item 6.

In view of the unusual circumstances of the present case, I caused the Department chemist to make experiments to determine whether in fact alcoholic beverages lose proof merely by being left standing. These experiments were conducted over a period of nine months. It was found that apple brandy in the original container which had been opened and then corked with an open hole pourer lost a total of 3.8 proof in nine months, or an average monthly loss of .42 plus proof per month. The chemist concluded that the loss in proof was due to evaporation since the volume of liquor in each case at the end of the period was less than the original volume. Similar experiments conducted by the Chemist-in-Charge of the Alcohol Tax Unit of the Federal Department of the Treasury at Philadelphia, Penna. support this general finding.

It therefore seems that the loss of proof in the instant case (since there is no other discrepancy) might well have been caused by evaporation over the period of years from 1935 and 1936 until the bottles were seized on November 22, 1939.

Under all of the facts and circumstances, I conclude that the Department has not sustained the burden of proving that the beverages in question were in fact illicit as defined by the Alcoholic Beverage Law. The charges will, therefore, be dismissed.

Accordingly, it is, on this 8th day of February, 1941,

ORDERED, that these proceedings be and the same are hereby dismissed.

E.W. GARRETT,
Acting Commissioner.

5. ELIGIBILITY - MAINTAINING A LOTTERY - EMPLOYMENT AS COLLECTOR ON COMMISSION - NOT MORAL TURPITUDE - APPLICANT NOT DISQUALIFIED BY SUCH CONVICTION.

In the Matter of the)	
Eligibility of)	
)	
GIRO DERRICO;)	ON HEARING
59 Bay Street,)	CONCLUSIONS
Montclair, N. J.,)	
)	
Holder of Plenary Retail Con-)	
sumption License No. C-2 issued)	
by the Board of Commissioners)	
of the Town of Montclair.)	
-----)	

Information having been received that, in 1928, the above named licensee was convicted of the crime of maintaining a lottery, a hearing was scheduled in order to determine whether he is eligible to hold a liquor license.

R. S. 33:1-25 provides that no license shall be issued to any person who has been convicted of a crime involving moral turpitude. The issue, therefore, is whether, under the circumstances of this case, the crime of maintaining a lottery involved moral turpitude.

Licensee admits that, on November 27, 1928, he pleaded non vult to the aforesaid crime, was placed on probation for three years, and fined \$250.00. He testified that, at the time of his arrest, he was picking up slips from different number writers and turning in the proceeds to a "banker". Our investigation shows that, at the time of his arrest, he stated that he worked on 20% commission and named the "banker" for whom he worked. He now states that his earnings ran from \$20.00 to \$30.00 per week.

Commercialized gambling may or may not involve moral turpitude, depending upon the circumstances of the case. Where, as here, it appears that an individual is a "collector", it has been determined that the element of moral turpitude is not involved in the conviction. Re Case No. 295, Bulletin 351, Item 10; Re Case No. 296, Bulletin 353, Item 12; Re Case No. 315, Bulletin 396, Item 4. The light sentence imposed in the present case is an additional factor to be considered.

Licensee's record is otherwise clear.

I conclude, therefore, that licensee's conviction in 1928 did not involve moral turpitude, and hence that he is not disqualified by statute from holding a liquor license.

Licensee has held a liquor license in Montclair since Repeal. Further investigation will be made to determine whether he disclosed his conviction in his application for a license filed with the Town Clerk. An applicant is required to disclose a conviction whether or not the crime involves moral turpitude. If a false statement has been made in an application, disciplinary proceedings will be instituted by this Department against the licensee. If such proceedings are brought, licensee will be afforded an opportunity to be heard at the hearing held therein.

E. W. GARRETT,
Acting Commissioner.

Dated: February 8, 1941.

6. ELIGIBILITY - FALSE SWEARING - MORAL TURPITUDE - APPLICANT
DECLARED INELIGIBLE FOR EMPLOYMENT BY LIQUOR LICENSEE.

February 8, 1941

Re: Case No. 363

Hearing was held to determine whether applicant has been convicted of a crime involving moral turpitude. On January 29, 1940 applicant was convicted for false swearing and was sentenced to a term of one year in the county workhouse. This sentence was later reconsidered and reduced to six months. There is no other record of any conviction against him.

Applicant testified that a shooting had occurred in his premises; that he had made a sworn statement to the police in which he

implicated two notorious characters of the community as being the persons who had done the shooting; that those persons were arrested and indicted for possession of concealed weapons; that thereafter and before the trial of these persons, he was approached by one of these persons on at least three occasions and was threatened with bodily injury if he testified against him; that at the trial, because of these threats, he repudiated his sworn statement.

As a result of his false testimony, the defendants in the criminal case were acquitted. The petitioner was then indicted for false swearing and thereafter was convicted.

Although applicant's motive in committing the perjury may have been prompted through fear, such a crime, striking at the basic root of our vital court justice, necessarily involves moral turpitude. Re Case No. 270, Bulletin 314, Item 3.

It is recommended that applicant be declared ineligible for employment by a liquor licensee.

Abraham Merin,
Attorney.

APPROVED:
E. W. GARRETT,
Acting Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against
ISADOR STEIN,
329 Fifthcenth Ave.,
Newark, N. J.,
Holder of Plenary Retail Consumption License C-609 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.
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CONCLUSIONS
AND ORDER

Sidney Simandl, Esq., Attorney for Defendant-Licensee.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to a charge of selling an alcoholic beverage at less than the Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

The Department file discloses that on January 11, 1941 two investigators entered the barroom of the licensed premises. One of the investigators proceeded to the bar and asked the bartender for a pint of Three Feathers Blended Whiskey. The investigator gave the bartender a dollar bill and twenty cents in change, which the bartender rang up on the cash register without comment. The licensee was present in the barroom at the time but there is nothing in the Department file which indicates that he in fact was personally aware of the transaction. The minimum consumer price at which pint bottles of this product could lawfully be sold at the time was in fact \$1.33. Bulletin 424.

When the investigators identified themselves to the bartender and the licensee, the licensee stated that he had received the Fair Trade price lists and knew that the minimum consumer price of Three Feathers Blended Whiskey was \$1.33 but that they "made a mistake and that's all." Such "mistake", even though due to carelessness, is no excuse. Re Blun, Bulletin 442, Item 9, and the items therein cited.

In connection with his guilty plea, the licensee asks that he "receive the minimum penalty, or, if possible, even less...." His request is unique, to say the least. Funk & Wagnalls' New Standard Dictionary defines "minimum" as "The least possible quantity, amount or degree that can be assigned in a given case or under fixed conditions...." There is nothing that can be "even less" than "least". Just as nothing can be greater than the maximum, so nothing can be less than the minimum. The minimum penalty for sale below Fair Trade has been fixed at ten days. Since the instant offense is the defendant-licensee's first violation of record, the minimum penalty, and nothing less, will be imposed.

By entering a guilty plea in ample time before the date set for hearing, the Department has been saved the time and expense of proving its case, for which five days of the penalty will be remitted.

Accordingly, it is, on this 8th day of February, 1941,

ORDERED, that Plenary Retail Consumption License C-609, heretofore issued to Isador Stein by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of five (5) days, effective February 10, 1941, at 3:00 A.M.

E. W. GARRETT,
Acting Commissioner.

8. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - MITIGATING CIRCUMSTANCES - 3 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against
S. & K. HOLDING CO., INC.,
T/a Katy's Tavern,
187 South Orange Avenue,
Newark, N. J.,
Holder of Plenary Retail Consumption License C-890, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS
AND ORDER

Sidney Simandl, Esq., Attorney for the Defendant-Licensee.
Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The licensee has pleaded non vult to charge of having sold alcoholic beverages to a minor on November 23, 1940 and on divers days prior thereto, in violation of R. S! 33:1-77.

The sole question, therefore, concerns the penalty which should be imposed.

Under the established policy of this Department, the penalty usually imposed for such violation is a suspension of the license for ten days, less five days for the plea.

Licensee, however, prays that under the facts in this case a lesser penalty than the usual minimum penalty should be imposed. The reasons advanced are that the minor in question, at a hearing on the criminal phase of this case in the Police Court on December 13, 1940, testified under cross-examination that she was born on May 31, 1920; was five feet, eight inches tall, and weighed 138 pounds; that in August 1940 one Milton Walsky, a member of the licensed corporation, asked her to sign a paper that she was over the age of 21 years; that at that time she stated she was 24 years of age and therefore it was not necessary for her to sign such a paper.

The police officers who participated in the investigation of this case corroborate the fact that the minor appears to be over 21 years of age and that she testified as herein stated.

Chapter 228, P.L. 1939 absolves the person making the sale if compliance is made with the three conditions therein set forth; namely, (1) that the minor falsely represented in writing that he was of age; (2) that he actually appeared to be of age; and (3) that the sale was actually made on reliance of both the written representation and the appearance of the minor.

Thus to escape the consequence of the sale to a minor, no matter how well intentioned, the three prerequisites provided by the amendment must affirmatively appear. In the instant case the minor did not falsely represent in writing that she was of age, so that on a strict construction of the law as it is presently written, if a plea of not guilty had been entered under the facts as here represented, a finding of guilt would be the only alternative.

I am asked, however, to take all of the facts and circumstances into consideration and to deviate in fixing the penalty from the established policy heretofore indicated.

Under the facts and circumstances as here represented and corroborated, I am satisfied that there is justification to differentiate this case from others previously adjudicated and therefore shall suspend the license for three days.

Accordingly, it is, on this 10th day of February, 1941,

ORDERED, that Plenary Retail Consumption License C-890, heretofore issued to S. & K. Holding Co., Inc., T/a Katy's Tavern, by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of three (3) days, effective February 17, 1941, at 3:00 A.M.

The penalty herein imposed shall not be taken as a criterion for the disposition in the future of violations involving sales to minors. All that is indicated here is that in a proper case and in the exercise of sound discretion, appropriate penalties may be imposed.

E. W. GARRETT,
Acting Commissioner.

9. SEIZURES - CONFISCATION PROCEEDINGS - TRANSPORTATION BY TRANSPORTATION LICENSEE IN UNLICENSED VEHICLE - APPARENT NEGLIGENCE, RATHER THAN DELIBERATE INTENT TO VIOLATE THE LAW - VEHICLE AND ALCOHOLIC BEVERAGES RETURNED UPON EXECUTION OF BOND - RELEASE FROM LIABILITY UNDER THE BOND UPON PAYMENT OF COSTS AND ISSUANCE OF RATIFYING PERMIT AT FEE OF \$25.00.

In the Matter of the Seizure on)	Case No. 5898
November 1, 1940 of a G.M.C.)	
Truck and 53 cases of Chateau)	ON HEARING
Gay champagne found therein, on)	CONCLUSIONS AND ORDER
the public highway in the Town-)	
ship of Raritan, County of)	
Middlesex and State of New Jersey.))	

Fred J. Staut, Assistant Secretary of Liberty Motor Freight Lines, Inc., for Liberty Motor Freight Lines, Inc.
 Harry Castelbaum, Esq., Attorney for the Department of Alcoholic Beverage Control.

On November 1, 1940 a Raritan Township police officer stopped a motor truck for a motor vehicle violation. Examination of the vehicle thereafter disclosed that it was transporting 53 cases of champagne. Since the truck bore no liquor transportation insignia, both the truck and the champagne were seized as unlawful property. Thereafter, Liberty Motor Freight Lines, Inc., the lessee of the vehicle and the holder of a State transportation license, as principal, and the Century Indemnity Company as surety, executed a bond in the penal sum of \$4,000.00 and reclaimed the truck and champagne.

At the hearing, Liberty Motor Freight Lines, Inc. urged that it be relieved of the forfeiture of the truck and the champagne because it had not consciously intended to violate the law.

Fred J. Staut, the Assistant Secretary of the company, testified that the Liberty Motor Freight Lines, Inc., engaged in transporting general merchandise, is now the holder of transportation license T-2 issued July 19, 1940; that prior thereto it held pick-up permits issued on July 30, 1938 and on July 1, 1939; that the truck which was used in the transportation of the champagne was leased by it from Michael Altieri for the purpose of local pick-up and delivery service and was not licensed to transport alcoholic beverages because the company did not intend using that truck in its liquor transportation business; that the liquor was loaded from its platform by mistake on this vehicle although it then had four other trucks available which were licensed for transportation of alcoholic beverages.

In view of the foregoing, I am satisfied that, while the Liberty Motor Freight Lines, Inc. was negligent, there was no deliberate attempt or intent on its part to violate the law. It has obtained transportation insignia for seventy trucks. Its record is otherwise clear. The case is not one of transporting "bootleg" liquor - a transportation insignia for the seized truck could have been obtained on proper application to this Department.

The laws and regulations respecting transportation must, however, be enforced and licensees taught to comply therewith.

Under the circumstances, Liberty Motor Freight Lines, Inc. may be relieved of the forfeiture of the truck and the champagne, provided that on or before February 20, 1941 it pays the costs involved in the seizure thereof and applies for and completes all steps necessary to obtain a special permit retroactively validating the illegal transportation in the truck. Such costs of seizure and storage, together with a punitive fee of \$25.00 for the said permit, will be adequate penalty. Re Case No. 5572, Bulletin 394, Item 16. Cf. Re Case No. 5905, Bulletin 441, Item 1.

Accordingly, it is ORDERED that if, on or before February 20, 1941, Liberty Motor Freight Lines, Inc. pays the costs of seizure and storage in this case and applies for and obtains a special validating permit for the illegal transportation, both Liberty Motor Freight Lines, Inc. as principal, and the Century Indemnity Company as surety, will be released from liability to the Acting Commissioner of Alcoholic Beverage Control (except as to their indemnification of the Acting Commissioner against the suits or claims of third persons) on their joint bond herein of November 2, 1940.

Dated: February 10, 1941.

E. W. Garrett

Acting Commissioner.