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

BULLETIN 372. JANUARY 5, 1940.

1. DISCIPLINARY PROCEEDINGS - EMPLOYMENT OF FEMALE TO TEND BAR - THREE DAYS ON CONFESSION OF GUILT.

In the Matter of Disciplinary Proceedings against

REBECCA ERTAG,
191 Plane Street,
Newark, New Jersey.

Holder of Plenary Retail Consumption License C-69, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Leo Ertag, Esq., Attorney for Defendant-Licensee.

Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee has pleaded guilty to a charge of allowing a female to sell and serve alcoholic beverages to patrons on his licensed premises, contrary to municipal resolution.

The usual penalty for this violation is five days.

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

Accordingly, it is, on this 28th day of December, 1939,

ORDERED that plenary retail consumption license C-69 heretofore issued to Rebecca Ertag, 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, commencing January 2, 1940 at 5 A.M.

D. FREDERICK BURNETT,
Commissioner.

2. PRACTICES DESIGNED TO UNDULY INCREASE THE CONSUMPTION OF ALCOHOLIC BEVERAGES - FREE BEER BY THE HOUR - FORBIDDEN.

February 28, 1939.

Mr. George Lipitz,
t/a Mid-Way Inn,
Trenton, New Jersey.

My dear Mr. Lipitz:

My attention has been called to the newspaper

announcement of the Grand Opening, Saturday, February 11th, of the Mid-Way Inn, corner Ingham Avenue and Calhoun Street, Trenton, offering "FREE - Beer Saturday Night from 9 to 10 - FREE" and advertising prices of drinks and packaged goods.

You have certainly started off on the wrong foot. Have you never heard of Regulations 20, Rule 20, which reads:

> "No retail licensee shall, directly or indirectly, offer or furnish any gifts, prizes, coupons, premiums, rebates, discounts or similar inducements with the sale of any alcoholic beverage for consumption off the licensed premises; provided, however, that nothing herein contained shall prohibit retail licensees from furnishing advertising novelties of nominal value."

The offer of free beer as an inducement to the sale of package goods for off-premises consumption is in violation of Rule 20. Liquor licensees may not, at any time, make gifts to their customers in respect to sales for off-premises consumption, excepting only advertising novelties of nominal value, as permitted by the Rule. See Re Liebesman, Bulletin 219, Item 7; Re Eckstein, Bulletin 290, Item 11.

Moreover, I now further rule, pursuant to the power conferred by R.S. 33:1-39 (Control Act, Sec. 36) to make special rulings and findings with respect to gifts of products and things of value, and practices designed unduly to increase the consumption of alcoholic beverages, that free beer by the hour is prohibited at any time. A drink on the house, now and then, is one thing. An hour's drinks on the house every Saturday night is quite another.

You are directed to cease and desist from such practices forthwith.

Violation is cause for the revocation of your license.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

3. NON-BEVERAGE ALCOHOL - IMPROPER ADVERTISING.

December 16, 1959.

Emil Sawczuk and Mike Szarko,
Ferry Wine & Liquor Store,
Newark, New Jersey.

Gentlemen:

It is brought to my attention that you have advertised in the Kronika of December 1st:

"GRAIN ALCOHOL

(CZYSTY DYSTYLOWANY ALKOHOL - 190 PROOF)
PINT $1.00 - KWARTA $1.95

Do Uzytku Medycznego i Innych Napoji Beztrunkowych

FERRY WINE AND LIQUOR STORE
158 Ferry Street Newark, N. J.
Tel. Market 2 - 9693"

I am informed that the translation of this is as follows:

"GRAIN ALCOHOL
(PURE DISTILLED ALCOHOL - 190 PROOF)
PINT $1.00 QUART $1.95

For medical use and for other non-intoxicating drinks"

The translator tells me that the fourth line is ambiguous and not susceptible of accurate translation but that the implication is that the alcohol may be added to a non-alcoholic beverage thus making a potable alcoholic beverage.

Now this, if true, is all wrong. You are authorized under your alcohol permit to sell alcohol only for non-beverage use. It is one of the terms of the permit. It is, therefore, wholly out of order for you to advertise in any way that may infer or imply that the alcohol may be used for beverage use. You are directed to stop such advertising forthwith. If it occurs again, your permit will be subject to revocation.

I shall expect your written assurance by return mail.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

BY: Maurice E. Ash,
Senior Inspector.

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

In the Matter of Disciplinary Proceedings against

JOSEPH WEISBERGER,
492 Jersey Avenue,
Jersey City, N. J.

Holder of Plenary Retail Distribution License D-5 issued by the Board of Commissioners of the City of Jersey City.

CONCLUSIONS AND ORDER

. . . . . .

John J. Meehan, Esq., Attorney for the Licensee.

S. J. MacIntosh, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee has pleaded guilty to a charge that on or about October 26, 1939, without having first obtained a special permit so to do, he sold a quart bottle of GOLD FEATHERS Distilled Dry Gin below the minimum consumer price published in Bulletin 350 of this Department in violation of Rule 6 of State Regulations 30.

The usual punishment for this violation is ten days. However, the licensee entered his plea in ample time prior to hearing and thereby saved the Department time and expense.

Accordingly, it is on this 31st day of December, 1939

ORDERED, that Plenary Retail Distribution License D-5 heretofore issued by the Board of Commissioners of the City of Jersey City be and the same is hereby suspended for five (5) days effective January 6, 1940 at 12:01 A.M.

D. FREDERICK BURNETT,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - EMPLOYMENT OF FEMALE TO TEND BAR - 3 DAYS.

In the Matter of Disciplinary Proceedings against

VILLAGE GARDEN (a corporation), 594 So. Orange Ave., Newark, N. J.

Holder of Plenary Retail Consumption License C-192 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

. . . . . .

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

Paul Langmack, Secretary for Village Garden.

BY THE COMMISSIONER:

The licensee has pleaded guilty to a charge that on or about October 14, 1939 and on or about October 21, 1939, it allowed and employed a female to sell and serve alcoholic beverages to patrons on its licensed premises where the principal business is the sale of alcoholic beverages in violation of Section (a) of Newark Resolution 4889 adopted May 24, 1939.

The usual penalty for such violation is five days. However, by entering his plea in ample time prior to hearing, the Department has been saved time and expense.

Accordingly, it is on this 31st day of December, 1939

ORDERED, that Plenary Retail Consumption License C-192, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for three (3) days, effective January 6, 1940 at 3 A.M.

D. FREDERICK BURNETT,
Commissioner.

6. APPELLATE DECISIONS - HOBBS VS. LOWER PENNS NECK

Edith Holland Hobbs,
Appellant,
-vs-
Township Committee of the Township of Lower Penns Neck,
Respondent.

On Appeal

CONCLUSIONS

Joseph Narrow, Esq., Attorney for Appellant.

W. Orvyl Schalick, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from denial of transfer of her plenary retail consumption license from Main Street and Enlow Place to 29-31 West Pittfield Street, in the Village of Pennsville, Township of Lower Penns Neck.

Respondent's resolution denying the transfer was based upon a finding that the premises to which the transfer was sought are located in a residential district and because numerous persons objected thereto.

A transfer of a liquor license is not an inherent or automatic right. The issuing authority may grant or deny the transfer in the exercise of a reasonable discretion. If denied on reasonable grounds, such action will be affirmed. On the other hand, where it appears that the refusal was arbitrary, the action of respondent will be reversed. Shapley vs. Delaware, Bulletin #294, Item #7, and cases cited therein.

The premises to which the appellant seeks to transfer her license consist of a house, which is one of fourteen, located on the southwest side of West Pittfield Street, between Front Street and Broadway. The house is vacant, but has been used for residential purposes for the past four or five years. There is evidence that prior to that time a grocery store was conducted therein for a short period of time. All other houses on the same side of the street are used for residential purposes. On the opposite side of West Pittfield Street there are seven residences, but directly opposite the premises in question there is a grove of trees which extends about one hundred and fifty feet along the street. This grove, which also has a depth of about one hundred and fifty feet, is used for picnic purposes during the summer months and is part of a large park, which extends in a northeasterly direction to the Delaware River. In the park to the rear of the picnic grove, and, hence, at least one hundred and fifty feet from West Pittfield Street, is an amusement area with a merry-go-round, whip, caterpillar, roller-skating rink, and other contraptions,

However, the presence of the large number of homes on both sides of West Pittfield Street and the fact that the picnic grove, which fronts on said street, has the appearance of a woodland, leads me to conclude that this section of West Pittfield Street is clearly residential in character.

The transcript of the hearing below, which was introduced into evidence by consent, shows that fourteen persons who either owned or resided in property located on this section of West Pittfield Street objected to the transfer because of the residential character of the neighborhood. Seven of these objectors appeared at the hearing to protest on the same ground.

A local issuing authority may, within its discretion, refuse a license in a residential area where it reasonably concludes a substantial sentiment to be against any such license. Lojewski vs. Bayonne, Bulletin #201, Item #1; Morrovitz vs. Bellmawr, Bulletin #329, Item #9; Fly vs. Waterford, Bulletin #336, Item #11. The present case is distinguishable from Shapley vs. Delaware, supra, wherein it was determined that the section was rural in character, rather than residential, and those cases in which it was decided that premises to which the transfer was sought were located in a business district. Hence, the determination of the respondent herein appears to be reasonable.

Appellant further alleges that she has made certain alterations in the premises in reliance upon conversations with two of the three Township Committeemen before filing her application to transfer. Committeeman Hann admitted that before appellant made such application, she spoke to him and that he told her he could not see any objections at the time. He testified, however, that he also told her that it was the Township Committee which would have to decide her application. Committeeman Whitesell testified to the same effect. Counting noses and lining up a favorable majority is often helpful but does not insure results where men do their duty. True, in fairness, members of issuing authorities should refrain from expressing any opinions which might lead wishful thinkers to color with green, as a "GO" sign, instead of cautionary yellow, which might turn to red. However, a license issuing authority is not bound by any informal remarks made by its members or action taken prior to the hearing on objections filed. Stein vs. West New York, Bulletin #101, Item #7; Held vs. Deptford, Bulletin #269, Item #4; Granda vs. Rockaway, Bulletin #282, Item #7. Cf. Lewis vs. Phillipsburg, Bulletin #232, Item #13. It acts only in formal meeting assembled and not on the street. Curbstone opinions of its members are a vain thing for safety. The fact that a municipal official, in advance of a public hearing, may tell an importunate constituent that, as presently informed, he sees no objection, is no reason why he must vote that way after he has heard the other side. That's the object of having a hearing. Government by "buttonhole" has no standing in a democracy.

In the instant case, after the hearing, the vote was unanimous in denying the application as well it might be under the facts.

The action of respondent is, therefore, affirmed.

D. FREDERICA SUMMET

Dated: January 2, 1940. Commissioner.

7. APPELLATE DECISIONS - FOREST HILL BOAT CLUB v. CINNAMINSON TOWNSHIP.

FOREST HILL BOAT CLUB,

Appellant,

vs.

TOWNSHIP COMMITTEE of the TOWNSHIP OF CINNAMINSON,

Respondent.

ON APPEAL

CONCLUSIONS

Vincent L. Gallaher, Esq., Attorney for Appellant.
Walter Carson, Esq., by Henry B. Coles, Jr., Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant, an active boat club since 1915 and an accredited member of the Delaware River Yachtman's League (branch of the American Power Boat Association), appeals from the Cinnaminson Township Committee's refusal to grant it a club license to dispense liquor at its club house on the Delaware River waterfront, Riverton, Cinnaminson Township.

The Township, whose population is estimated to be between 2,500 and 3,000, contains a single club and two plenary retail consumption licenses, the said club license having been successively renewed to the Forklanding Yearly Beneficial Association since 1934.

There is no objection to appellant's qualification or fitness for a club license, or to the location or suitability of its premises. Respondent's contention seemingly is that, in order to avoid the difficulty in determining which clubs may get a club license and which may not, it is now seeking to eliminate all such licenses entirely from Cinnaminson, including the one presently outstanding. Thus, on September 22, 1939, it introduced an ordinance, finally adopted on October 17, 1939, prohibiting the issuance of any club license thereafter in Cinnaminson and, while permitting the one already in existence to continue for its term, nevertheless forbidding its renewal.

The respondent is empowered to adopt such an ordinance. R.S. 33:1-12(5) provides that each municipal governing body "may, by ordinance, enact that no club licenses shall be granted within its respective municipality."

I have no jurisdiction to review the reasonableness of respondent's ordinance in so far as it totally prohibits the existence of any club license in the Township beginning with the coming fiscal year. Tenenbaum vs. Salem, Bulletin 109, Item 1; Re Gordon, Bulletin 151, Item 12.

However, as regards the current fiscal year, the ordinance, while prohibiting the issuance of any additional club licenses, nevertheless permits the one already in existence to finish out its term. Hence, so far as this year is concerned, it constitutes, in effect, a limitation on (and not a total prohibition of) club licenses. Such a limitation, like any other municipal limitation on the number of licenses is, under R.S. 33:1-41, subject to review by the State Commissioner on appeal.

On such review, I find the limitation to be reasonable. The bona fides of respondent's determination to eliminate club licenses from the Township as soon as possible is not impugned. The Committee, in seeking to prohibit all such licenses, was but fair in nevertheless permitting the one already in existence to finish out its term.

Appellant contends, however, that the ordinance should not, in any event, be deemed to be effective against its application since the ordinance was not actually adopted until after the application was denied.

A similar situation occurred in Franklin Stores vs. Elizabeth, Bulletin 61, Item 1. In that case, too, an application was made and denied before the adoption of a certain ordinance. It was there contended by the appellant that such later enacted ordinance did not validate denial of the application; that such an ordinance could not have any retroactive effect; that the appeal must be adjudicated on the factual situation as it existed at the time of the denial of the application.

I there ruled against such contention, saying:

> "The spirit and not the letter of the law should dominate. Sound public policy requires that if a special privilege is to be given, the grant must be consonant with such policy at the time the grant is made. Whether a license should be issued is not a game of legal wits or abstract logic, but, rather, a solemn determination on all the concrete facts, whether presented originally or on appeal, whether or not it is proper to issue that license. It is not a mere umpire's decision whether or not some administrative official previously made a move out of order or erred in technique or did something which by strict rules he had no right to do, but rather a final adjudication whether the license should be issued NOW... True, the ordinance had not been adopted at the time of the denial, but it was in actual, bona fide contemplation. The good faith of respondents is demonstrated by the actual adoption of such ordinance the month following the denial. I find, as fact, that the policy existed at the time the application was denied even though it was not formally manifested until a later date. The contention of appellant fails, not because the application was barred by the ordinance but rather because to grant it now would be in defiance of the local policy manifested by the ordinance in active, bona fide contemplation ot the time the application was denied."

See also to the same effect Widlansky vs. Highland Park, Bulletin 209, Item 7; Cocciolone vs. West Deptford, and Trovato vs. West Deptford, Bulletin 247, Item 5; Galluccio and Sciarrabone vs. Belmar, Bulletin 255, Item 8; Garrison vs. Bridgeton, Bulletin 301, Item 3; Schuttenberg vs. Keyport, Bulletin 327, Item 3.

So, in the present case, I conclude that the municipal policy exhibited by the Cinnaminson ordinance which has been in force as a formal regulation since October 17, 1939 is the true criterion on which this decision must be based.

The action of respondent is affirmed.

D. FREDERICK BURNETT

Commissioner.

Dated: December 31, 1939.

NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1ST, 1939 TO DECEMBER 31ST, 1939 AS PER CERTIFICATIONS RECEIVED FROM THE ISSUING AUTHORITIES

C L A S S I F I C A T I O N O F L I C E N S E S

County	Plenary Retail Consumption No. Issued	Plenary Retail Consumption Fees Paid	Plenary Retail Distribution No. Issued	Plenary Retail Distribution Fees Paid	Club No. Issued	Club Fees Paid	Limited Retail Distribution No. Issued	Limited Retail Distribution Fees Paid	Seasonal Retail Consumption No. Issued	Seasonal Retail Consumption Fees Paid	Number Surrendered Revoked Expired	Number Licenses in Effect	Total Fees Paid
Atlantic	469	176,610.79	62	21,277.00	14	1,075.00	1	28.96	3	410.87	5	544	199,402.62
Bergen	810	263,966.46	229	55,292.77	48	4,400.13	36	1,625.00	8	1,140.54	9	1122	326,424.90
Burlington	182	59,225.30	15	3,500.00	30	3,575.00	1	25.00				228	66,325.30
Camden	449	188,777.63	49	18,275.00	55	7,221.12	1	50.00	4	973.31	4	554	215,297.06
Cape May	123	43,050.00	10	3,500.00	5	499.18						138	47,049.18
Cumberland	76	22,244.41	9	1,925.00	24	2,599.18						109	26,768.59
Essex	1445	726,189.58	350	165,873.94	73	9,743.44	25	1,250.00	1	230.19	4	1890	903,287.15
Gloucester	109	30,350.00	9	1,325.00	5	300.00						123	31,975.00
Hudson	1625	669,449.09	280	111,580.00	51	6,447.79	58	2,306.64				2014	789,783.52
Hunterdon	82	21,788.56	1	200.00	1	150.00			1	112.54	1	84	22,251.10
Mercer	442	185,657.17	43	11,100.00	35	4,435.89			1	99.80	1	520	201,292.86
Middlesex	610	236,982.42	41	11,032.42	33	2,755.27	1	25.00	5	1,076.27	7	683	251,871.38
Monmouth	514	205,216.63	80	23,273.18	27	2,969.06	10	400.00	28	8,139.08	32	627	239.997.95
Morris	335	95,825.24	72	17,442.60	28	2,316.86	2	50.00	14	1,992.30	19	432	117,627.00
Ocean	182	90,105.08	28	10,190.00	7	700.00					1	216	100,995.08
Passaic	891	343,019.07	121	34,833.32	35	4,330.37	18	797.53	6	975.00	5	1066	383,955.29
Salem	50	15,750.00	4	550.00	8	650.00						62	16,950.00
Somerset	187	64,293.90	22	5,025.00	10	969.80			1	125.00	1	219	70,413.70
Sussex	163	34,714.64	10	1,690.00	5	265.00			3	450.00	3	178	37,119.64
Union	556	273,923.28	120	40,502.22	61	7,037.10	18	846.58	1	273.75	1	755	322,582.93
Warren	138	40,149.05	13	2,332.50	17	1,770.00	2	70.00	3	406.00	4	169	44,727.55
TOTALS	9438	3,787,288.30	1568	540,719.95	572	64,210.19	173	7,474.71	79	16,404.65	97	11733	4,416,097.80

D. FREDERICK BURNETT, Commissioner.

Respectfully submitted,
ERWIN B. HOCK
Deputy Commissioner.

Report for the six months period ending January 1st, 1940.

9. APPELLATE DECISIONS - SQUARE TAVERN vs. JERSEY CITY.

SQUARE TAVERN, INC.,

Appellant,

-vs-

THE BOARD OF COMMISSIONERS OF THE MAYOR AND ALDERMEN OF THE CITY OF JERSEY CITY,

Respondent.

ON APPEAL

CONCLUSIONS

. . . . . .

Meehan Brothers, Esqs., by John J. Meehan, Esq., Attorneys for Appellant.

N. Louis Paladeau, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from the revocation of appellant's plenary retail consumption license for its tavern at 932 Bergen Avenue, Jersey City.

No contest is made of the first two findings of respondent, viz.:

(1) That a bartender was working there without having first obtained an identification card as required by municipal regulation, or

(2) That appellant, though making a change in its corporate set-up, failed to notify respondent within ten days thereafter, as required by the Alcoholic Beverage Law.

The whole fight on this appeal is centered on the third finding, viz.:

(3) That one Jacob Jaffee (who, being president and majority stockholder of the South Hudson Beverage Distributing Co., a State Beverage Distributor licensee, was disqualified under the Alcoholic Beverage Law from being interested in any retail liquor place) nevertheless was connected with it in a business capacity and was the real although undisclosed owner of more than ten per cent. of the stock in the corporate appellant.

Appellant has held a license for the tavern since February 1936. Louis Poulos testified that he and Jaffee were among the founders of the tavern, and that Jaffee (apparently during 1936) paid Poulos $1000.00 for his five shares of stock in the tavern, whereupon Poulos endorsed his certificate in blank and delivered it to the lawyers but does not know in whose name the new certificate was made out but that William Conklin was in attendance and that all the negotiations for the sale of this stock had been directly between Poulos and Jaffee.

William Conklin, who from 1936 until August 1939 was president and also holder of five of the twelve shares of stock

in appellant, testified that he became connected with the tavern in 1936 when Jaffee offered him a job there; that, despite his office and stock ownership, he was never more than merely a bartender at the tavern, and took orders from Jaffee; that Jaffee in 1936 put the five shares in his (Conklin's) name, and also arranged for the recent transfer of that stock to George Elliott in August 1939; that he (Conklin) paid nothing for the stock and received nothing for it when it was thus transferred away; that, while he was at the tavern, its beer came from the South Hudson Beverage Distributing Company, the concern of which Jaffee is the president and holder of two thirds of its stock and with which the tavern ran up an unpaid bill, far exceeding any other liquor creditor's, of over $2800.00.

George Lorris (who, with Louis Poulos, owns all the shares of stock in the corporation that leases the tavern to appellant) testified that, last June, when appellant's check for the rent proved worthless, Jaffee replaced it with his own.

Despite Jaffee's denial of interest in appellant's tavern, to which, however, he admitted on trenchant cross-examination that he had a key, I see no reason for disbelieving the testimony of these witnesses. Conklin's confession carries the ring of truth and is supported by the testimony of Poulos and Lorris.

Appellant contends that to hold the corporation responsible for Jaffee's connection with it would penalize innocent stockholders. I am not at all sure, on the proofs made, that they are but, even so, it is the corporation, not they, which holds the license. If the corporation ought to and is made to suffer for its misdeeds, those interested in its stock must take the bitter with the sweet. As Judge Dill, speaking for the Court of Errors & Appeals, in Jackson vs. Hooper, 76 N. J. Eq. 592, said, more than thirty years ago:

> "The law never contemplated that persons engaged in business as partners may incorporate, with intent to obtain the advantages and immunities of a corporate form and then, Proteus-like, become at will a co-partnership or a corporation, as the exigencies or purposes of their joint enterprise may from time to time require.....
>
> "If they adopt the corporate form, with the corporate shield extended over them to protect them against personal liability, they cease to be partners and have only the rights, duties and obligations of stockholders. They cannot be partners inter sese and a corporation as to the rest of the world."

If the contention made by the learned attorney for the appellant were a sound defense, then a corporation would be practically immune from punishment for it could undoubtedly always dig up a few stockholders who were blissfully ignorant of what was going on. A corporation, however, is not a chameleon to change color as self-interest inspires.

The action of respondent is affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: January 2, 1940.

10. DISCIPLINARY PROCEEDINGS - EMPLOYMENT OF FEMALE TO TEND BAR - 3 DAYS.

In the Matter of Disciplinary Proceedings against

SAMUEL ELIA,
56 So. Orange Ave.,
Newark, N. J.

Holder of Plenary Retail Consumption License C-231 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

. . . . . .

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

Samuel Elia, pro se.

BY THE COMMISSIONER:

The licensee has pleaded guilty to a charge that on or about October 6, 1939, on or about October 7, 1939, and on or about October 14, 1939 and on or about October 15, 1939, he allowed and employed a female other than his wife to sell and serve alcoholic beverages to patrons on his licensed premises where the principal business is the sale of alcoholic beverages in violation of Section (a) of Newark Resolution 4889 adopted May 24, 1939.

The usual penalty for such violation is five days. However, by entering his plea in ample time prior to hearing, the Department has been saved time and expense.

Accordingly, it is on this 31st day of December, 1939

ORDERED, that Plenary Retail Consumption License C-231, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for three (3) days, effective January 6, 1940 at 3 A.M.

D. FREDERICK BURNETT,
Commissioner.

11. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES - 10 DAYS FOR JUMPING THE GUN.

In the Matter of Disciplinary Proceedings against

LOUIS SEIDMAN,
Originally, 1129 Broadway,
Now, 1129½ Broadway,
Camden, New Jersey.

Holder of Plenary Retail Distribution License No. D-17, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

CONCLUSIONS AND ORDER

. . . . . .

Harry M. Mendell, Esq., Attorney for Defendant-Licensee.

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

BY THE COMMISSIONER:

The defendant is charged with having sold liquor below the Fair Trade price in violation of Rule 6 of State Regulations 30.

On October 5, 1939, at 2:40 P.M., Investigator Clark of this Department entered the defendant's "package" liquor store at 1129 Broadway, Camden. After buying a gallon of wine, he also purchased from the clerk a quart of Mount Vernon Straight Rye Whiskey for $2.70, although the price tag on the shelf listed the item at $3.20, the then current Fair Trade price. See Bulletin 320, Sheet 40.

Although the defendant was not present in the store, his wife was there and knew of the clerk's sale of the Mount Vernon for $2.70.

The gist of the defense is that the defendant's wife, although then in charge, left the matter of price to the clerk; that he (the clerk) had that morning received a Fair Trade pamphlet which reduced the minimum resale price of Mount Vernon, quarts, from $3.20 to $2.70; that, however, he failed to note that the prices in the pamphlet were not to become effective until October 9, but erroneously thought they took immediate effect.

I am asked, under this defense, to believe that the clerk did not see the heavy bold-face type on the cover of the pamphlet, or the special notice inside the pamphlet, both of which expressly stated that the prices therein were not to be effective until October 9; further, that the clerk, although allegedly believing the pamphlet, which contained a complete summary of all Fair Trade prices as of October 9, was effective immediately, made no move whatsoever, from 9:30 A.M., when receiving the pamphlet, until 2:40 P.M., or later, when making the sale to the Investigator, to change the price tags in the store or to make up any guiding list, told neither the defendant nor his wife about the new pamphlet, and did not consult that pamphlet at all when having made sales on that day prior to the afternoon sale to the Investigator.

The alibi has the familiar hollow ring. Those who "jump the gun" will be set back appropriately whenever caught.

I find the defendant guilty as charged.

This suspension is effective against his license as transferred, since institution of these proceedings, to 1129½ Broadway, Camden. See Rule 1 of State Regulations 15.

Accordingly, it is, on this 31st day of December, 1939,

ORDERED that Plenary Retail Distribution License No. D-17, heretofore issued to Louis Seidman by the Municipal Board of Alcoholic Beverage Control of the City of Camden, be and the same is hereby suspended for a period of ten (10) days, effective January 6, 1940 at 9:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

12. SEIZURES - CONFISCATION PROCEEDINGS - AUTOMOBILES OF INNOCENT OWNERS RELEASED BUT BALANCE OF PROPERTY FORFEITED - PREMISES PADLOCKED IN PART.

In the Matter of the Seizure on October 23rd, 1939, of a still, appurtenant paraphernalia, and three motor vehicles on the Archie Dross Farm, Old Mill Road, Campgaw, in the Borough of Franklin Lakes, County of Bergen, and State of New Jersey.	Case 5604 On Hearing CONCLUSIONS AND ORDER

Gaudielle and Shuart, Esqs., by Marconi V. A. Caporale, Esq., Attorneys for Archie Dross and Jacob Dross.

Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On October 23, 1939, investigators of this Department seized an unregistered still and equipment in a barn on the Archie Dross Farm, located on Old Mill Road, Campgaw, in the Borough of Franklin Lakes New Jersey. The investigators arrested Dominick Lazzaro, who was in the barn, and Charles Sorce, whom they saw running away. They then seized a Buick Coupe owned by Jacob Dross and a Chevrolet Coupe owned by Archie Dross, both of which were found on the farm some distance away from the still. A short time later they seized a Ford Sedan, owned by Dominick Lazzaro and driven by another individual, when the Ford Sedan arrived at the farm with a quantity of sugar and lime.

At the hearing no one contested the fact that the still was being illegally operated. The still, appurtenant paraphernalia and all personal property found on the farm constitute unlawful property and are subject to forfeiture. R.S. 33:2-2.

At said hearing, however, Archie Dross appeared to oppose the padlocking of the premises and both he and Jacob Dross sought the return of their respective automobiles upon the ground that they are innocent of wrongdoing.

Archie Dross testified that on October 2, 1939 or October 4, 1939 a man whom he had never previously met and whose name he did not know called at the farm and agreed to rent the barn for one year at $25.00 per month, to be used for hay, grain and feed; that the man paid $25.00 for October rent and promised to return within a few days to draw up a lease; that the man never returned. Archie Dross further testified that on October 8, 1939, he went on a hunting trip to Canada and returned home on the early morning of October 23, 1939. This evidence is supported by documentary proof that he was in Canada between these dates.

Although the evidence shows that the still was large, that an electric wire had been run between the barn

and the cellar of the house, that a water-pipe had been laid between the barn and the well, I shall accept as true Archie Dross's testimony that he had no personal knowledge of the installation of the still or the existence of the electrical or water connections. In reaching this conclusion I am considering the fact that he had no previous criminal record; that, apparently, he was not connected with the actual operation of the still; and that, according to the evidence of a building inspector, no still or parts of a still were in the barn on October 4, 1939. However, it appears that Archie Dross was guilty of negligence in renting the barn without investigating the lessee. I shall not padlock his home, which would be too drastic a penalty against him, his wife and infant child, but I shall padlock the barn for six months.

As to the Chevrolet Coupe: This car was in bad running condition at the time of the seizure, was found some distance from the barn and from all the evidence I am satisfied that it was not used in connection with the operation of the still. Hence, it may be returned to Archie Dross, provided that on or before the 2nd day of February, 1940, he pays the costs of its seizure and storage. R.S. 33:2-7.

As to the Buick Coupe: This car is owned by Jacob Dross, who boards with and is a brother of the owner of the farm. Jacob Dross is employed as a machinist in Paterson; he used his automobile regularly to travel to and from his work, leaving the farm about 7:00 A.M. and returning about 5:45 P.M.; he has no criminal record and denies knowledge of the existence of the still; his car was found some distance from the barn. I am satisfied from the evidence that the Buick Coupe was not used in connection with the still. Hence, it may be returned to Jacob Dross, provided that on or before the 2nd day of February, 1940, he pays the costs of its seizure and storage.

Accordingly, it is ORDERED that the property set forth in Schedule "A", including the Ford Sedan, but excluding the Buick Coupe and Chevrolet Coupe, be and is hereby forfeited, and that it be retained for the use of hospitals, and State, county and municipal institutions or destroyed in whole or in part at the direction of the Commissioner; and it is further

ORDERED that the barn in which the illicit still was found on the Archie Dross Farm, located on Old Mill Road, Campgaw, in the Borough of Franklin Lakes, County of Bergen and State of New Jersey, shall not be used or occupied for any purpose whatsoever for a period of six months, commencing the 2nd day of February, 1940.

Frederick Burnett

Commissioner.

Dated: December 31, 1939.

SCHEDULE "A"

1 - Copper Column
2 - steel preheaters
1 - galvanized tri-box
1 - copper dephlagmator
1 - copper gooseneck
1 - set copper coils in galvanized cooler

1 - galvanized water tank
1 - galvanized receiving tank
4 - wooden vats full of mash
2 - empty wooden vats
1 - upright steam boiler
1 - Gardner steam pump
1 - Worthington steam pump
1 - Gould electric pump with G.E.Motor
66 - 5 gallon cans alcohol
28 - empty 5 gallon cans
75 - bags of coke
1 - 50 pound tub of yeast
15 - 100 pound bags of sugar
1 - 5 gallon galvanized measuring can
4 - 25 pound bags of lime
miscellaneous pipes, hose and fittings
1 - Ford Sedan, N. J. 1939 Registration No. RR44U, Engine No. 2711149
1 - Buick Coupe, N. J. 1939 Registration No. BD99C, Serial No. 33310232, Engine No. 43528434
1 - Chevrolet Coupe, N. J. 1939 Registration No. BF65P, Serial No. 2 GA11.12193, Engine No. 209586