

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

BULLETIN 448

MARCH 11, 1941.

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - DANKER v. OCEAN  
SALES TO MINORS - HINDERING AND FAILING TO FACILITATE INVESTIGATION OF CONDUCT OF LICENSED BUSINESS AND PREMISES - SUSPENSION BY MUNICIPALITY APPEALED ALLEGING THAT THE PERSON WHO COMMITTED THE ACTS WAS NOT AN EMPLOYEE - COMPENSATION NOT NECESSARY FOR EMPLOYMENT - SUSPENSION AFFIRMED.
2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - 10 DAYS SUSPENSION, LESS 5 FOR GUILTY PLEA.
3. MORAL TURPITUDE - EMBEZZLEMENT INVOLVES MORAL TURPITUDE.  
DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.
4. ELIGIBILITY - CONSPIRACY TO STEAL, AND RECEIVING STOLEN GOODS - MORAL TURPITUDE - APPLICANT DECLARED INELIGIBLE FOR EMPLOYMENT BY LIQUOR LICENSEE.
5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - THIRD DISSIMILAR OFFENSE - 15 DAYS SUSPENSION, LESS 5 FOR GUILTY PLEA.
6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - 10 DAYS SUSPENSION, LESS 5 FOR GUILTY PLEA.
7. DISCIPLINARY PROCEEDINGS - LOTTERIES AND GAMBLING OF COMMERCIAL PROPORTION - 15 DAYS SUSPENSION, LESS 5 FOR GUILTY PLEA.
8. APPELLATE DECISIONS - RANDO v. BURLINGTON  
NOISE, DISTURBANCE AND ALLOWING THE LICENSED PLACE OF BUSINESS TO BECOME A NUISANCE - RENEWAL DENIED - DENIAL AFFIRMED.
9. DISCIPLINARY PROCEEDINGS - SALES OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - 10 DAYS SUSPENSION - CARD PLAYING FOR MONEY - 5 DAYS SUSPENSION - WRITING AND SELLING OF NUMBERS - 5 DAYS SUSPENSION - TOTAL: 20 DAYS.
10. CLUBS - CLUB LICENSES ARE NOT ISSUABLE TO COMPANIES ORGANIZED MERELY TO HOLD TITLE TO PREMISES, BUT ONLY TO ORGANIZATIONS OPERATED FOR BENEVOLENT, CHARITABLE, FRATERNAL, SOCIAL, RELIGIOUS, RECREATIONAL, ATHLETIC, OR SIMILAR PURPOSES AND NOT FOR PRIVATE GAIN - APPLICATION DENIED.

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

BULLETIN 448

MARCH 11, 1941

1. APPELLATE DECISIONS - DANKER v. OCEAN

SALES TO MINORS - HINDERING AND FAILING TO FACILITATE INVESTIGATION OF CONDUCT OF LICENSED BUSINESS AND PREMISES - SUSPENSION BY MUNICIPALITY APPEALED ALLEGING THAT THE PERSON WHO COMMITTED THE ACTS WAS NOT AN EMPLOYEE - COMPENSATION NOT NECESSARY FOR EMPLOYMENT - SUSPENSION AFFIRMED.

HENRY DANKER,	)	
Appellant,	)	On Appeal
-vs-	)	
	)	CONCLUSIONS AND ORDER
TOWNSHIP COMMITTEE OF THE	)	
TOWNSHIP OF OCEAN, MONMOUTH	)	
COUNTY,	)	
Respondent.	)	
-----)	)	

William J. Blair, Esq., Attorney for Appellant.  
Henry H. Patterson, Esq., Attorney for Respondent.

Appellant appeals from a thirty-day suspension imposed upon his license C-12 for premises on the west side of State Highway #35 and Logan Road, Ocean Township.

The following charges were duly served by respondent on Appellant licensee.

"1. On August 3, 1940, you sold alcoholic beverages to two minors, Robert Edwards and Helen Gray.

"2. On August 3, 1940, you sold, served or delivered alcoholic beverages to the said Robert Edwards and Helen Gray, persons under the age of twenty-one years, or allowed, permitted or suffered the consumption of such beverages by said Robert Edwards and Helen Gray, upon your licensed premises, in violation of State Regulations 20, Rule 1.

"3. On August 3, 1940, you hindered and failed to facilitate an investigation of the above alleged violations upon your licensed premises in violation of R.S. 33:1-35."

After hearing duly held, respondent dismissed the first charge, found appellant herein guilty on the second and third charges, and imposed the suspension from which appeal has been taken.

On behalf of respondent, Investigator Robbins of this Department testified that, on the evening of August 3, 1940, he, his wife and Investigator Togno arrived at the licensed premises at about 11:30 P.M. and were directed to a table by Fred Danker,

son of the licensee; that while they were at the premises, Fred Danker picked up glasses and took them to the kitchen; brought out dishes of popcorn and potato chips and at one time mounted a platform and made an announcement over the loud-speaker.

Investigator Robbins further testified that, thereafter, he saw two couples (Helen Gray, whose age does not appear in the record; Helen Green, aged 18; Robert Edwards, aged 20, and Norman Juckett, aged 22) enter the premises and take their places at a table; that he saw a waitress approach the table where the young people were seated, speak to one of the boys and later bring two glasses of beer and one glass of a dark colored soda which were placed on said table; that, thereafter, he saw the waitress carrying one more glass of beer which she placed upon said table; that, after the two boys had left their table, he walked over to the two girls and, identifying himself, told them that he wished to question them about their ages; that Fred Danker then walked to the table and asked "What's the trouble?", whereupon he (Robbins) identified himself as an investigator from this Department and told Fred Danker that he and Togno were making an investigation of sales to minors; that Fred Danker thereupon lunged for the glasses on the table, bumping the table, hitting the glasses, spilling the contents of the four glasses and at the same time saying "Well, there goes your case - there goes your evidence."

The above testimony was corroborated by Investigator Togno.

The delivery of the beer was also corroborated by Robert Edwards, one of the boys who was, at that time, a month and one-half under the age of twenty-one and who testified that Norman Juckett ordered the two glasses of beer and a coca cola when the waitress first visited the table and that he (Edwards) ordered the other glass of beer when the waitress returned; that at no time did the waitress inquire as to the ages of any of those in his party. The delivery of the beer was also corroborated by Helen Green, who testified that Juckett ordered the first round of drinks and pushed one of the glasses of beer towards Bobby Edwards. While there is no evidence that any of the minors consumed the beer, there is evidence that a glass of beer was delivered by the waitress to at least one of the minors, namely, Robert Edwards. The evidence might well have sustained the first charge but appellant has not been harmed by its dismissal by the Township Committee and there is ample evidence to sustain the finding of guilt as to the second charge.

As to the third charge: This charge is based on R.S. 33:1-35, which provides, among other things, as follows:

"Every \*\*, licensee and every \*\* employee of every licensee shall, on demand, exhibit to the commissioner or other issuing authority, as the case may be, or to his or its deputies or investigators or inspectors or agents, all of the matters and things which the commissioner or other issuing authority, as the case may be, is hereby authorized or empowered to investigate, inspect or examine, and to facilitate, as far as may be in their power so to do, in any such

investigation, examination or inspection, and they shall not in any way hinder or delay or cause the hindrance or delay of same in any manner whatsoever."

It is clear that the investigators of this Department had the power to make the investigation which they attempted to make as to the alleged sale of alcoholic beverages to minors. I do not credit Fred Danker's testimony that he slipped and accidentally bumped against the table, in view of the evidence of the investigators which was corroborated by Helen Green, who testified:

"We were seated there and the inspector was speaking and young Mr. Danker came up and made forward to grab the glasses and they were spilled on the inspector."

I conclude that the action of Fred Danker was deliberate. The deliberate act of Fred Danker in destroying the evidence did not facilitate the investigation and may be reasonably said to have hindered and delayed the investigation.

Licensee, however, contends that Fred Danker was not his employee and that he, himself, was not guilty of violating the provisions of R.S. 33:1-35. It is undisputed that the son is regularly employed elsewhere, but he comes to the licensed premises whenever he has "two days off and every fourth weekend", and he was present at the tavern on the evening of August 3d because "that was my long weekend off". His actions, as testified to by the investigators, disclosed that on the evening in question he was an employee of the licensee even though he received no compensation. Salary or compensation is not a requisite to employment. 20 C.J. 1238; 39 C.J. 36. This is not a case involving a mere volunteer but rather one involving an unsalaried employee acting as a host or receptionist. In fact, this same young man, in October 1938, was then found to have been acting as a host or receptionist in his father's premises. Re Danker, Bulletin 274, Item 5.

It has been determined, in numerous cases, that a licensee is responsible for the acts of an employee even where it appeared that the employee received no compensation. Re Vlaminck, Bulletin 147, Item 4; Re Haino, Bulletin 295, Item 7; Re Geller, Bulletin 312, Item 1. Cf. Re Trenton Yacht Club, Inc., Bulletin 323, Item 14. I find that Fred Danker was an employee; that he deliberately violated the provisions of R.S. 33:1-35 and that the licensee is responsible for the actions of said employee.

There is further evidence upon which a finding of licensee's guilt as to said charge may be based. It appears from the investigators' testimony and the testimony of Inspector Murray, who entered the licensed premises after the investigators, that after the son had spilled the beer, a large crowd of patrons gathered around the table and created a commotion; that Henry Danker stood by and did nothing to quiet the patrons; that Henry Danker told the investigators and the inspector that he could do nothing with his son; that after the son ran out of the premises followed by Inspector

Murray, the licensee followed them to the street and again told the inspector that he could do nothing with his son. It appears from this evidence that the licensee himself, who should be boss in his own premises, failed to facilitate the investigation and, in fact, by his failure to act when he should have acted, caused the investigation to be hindered and delayed. The clear intent of the section is to require licensees to do all in their power to facilitate investigations and this the licensee did not do.

Hence, aside from the question of employment of the son, there is sufficient evidence to sustain the finding of guilt as to the third charge.

For the reasons stated, the action of respondent is affirmed.

Accordingly, it is, on this 3rd day of March, 1941,

ORDERED that the present appeal be and hereby is dismissed; and it is further

ORDERED that the thirty-day suspension imposed by respondent on appellant's plenary retail consumption license C-12 in this case, which suspension was held in abeyance pending disposition of the instant appeal, is hereby restored, to take effect on March 10, 1941, at 5:00 A.M.

E. W. GARRETT,  
Acting Commissioner.

2. 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  
  
JOE'S WINES & LIQUORS, INC.,  
4 W. Broadway,  
Paterson, N. J.  
  
Holder of Plenary Retail Distribution License No. D-51 issued by the Board of Alcoholic Beverage Control of the City of Paterson  
  
-----)

CONCLUSIONS  
AND  
ORDER

Joe's Wines & Liquors, Inc., by David Thaler, President.  
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 below Fair Trade, in violation of Rule 6 of State Regulations No. 30.

The Department file discloses that on January 29, 1941 an investigator of this Department purchased from the President of the licensee corporation a one pint bottle of Wilson "That's All" Blended Whiskey for \$1.25. 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, the President of the licensee corporation explained that he was not familiar with liquor prices as yet since he had purchased the business from the former licensee but two days previous to the investigation. Lack of familiarity with Fair Trade prices is no excuse. Re Alberts, Bulletin 446, Item 4, and the items therein cited.

The minimum penalty for sale below Fair Trade is ten days. Since the instant offense is the licensee's first violation of record, the minimum penalty will be imposed.

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

Accordingly, it is, on this 3rd day of March, 1941,

ORDERED, that Plenary Retail Distribution License D-51, heretofore issued by the Board of Alcoholic Beverage Control of the City of Paterson to Joe's Wines & Liquors, Inc., be and the same is hereby suspended for a period of five (5) days, effective March 10, 1941, at 7:00 A.M.

E. W. GARRETT,  
Acting Commissioner.

3. MORAL TURPITUDE - EMBEZZLEMENT INVOLVES MORAL TURPITUDE.

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

In the Matter of an Application )  
to Remove Disqualification be- )  
cause of a Conviction pursuant )  
to R. S. 33:1-31.2. )

CONCLUSIONS  
AND  
ORDER

Case No. 136. )  
)  
----- )

Petitioner's record shows that he has been convicted, on two separate occasions, of the crime of embezzlement. On the first occasion, in 1930, he was sentenced to probation for one year and to make restitution; the second time, in 1933, he was sentenced to imprisonment for six months. It appears that, in both instances, he embezzled money which he had collected for his employers and used it to finance his own stock transactions.

The crime of embezzlement ordinarily involves the element of moral turpitude. Re Case No. 362, Bulletin 443, Item 10; Re Case No. 316, Bulletin 397, Item 6; Re Case No. 285, Bulletin 345, Item 8. Nothing appears, in the record of the instant case, which would free petitioner's crimes of that element of moral turpitude.

Petitioner, in this proceeding, now seeks removal of the disqualification resulting from such convictions of crimes involving moral turpitude, pursuant to R.S. 33:1-31.2.

Since his release from the penitentiary in 1933, petitioner has lived with his family in the same municipality wherein he now resides. During those years, excepting for the last few months when he has been idle, he has, in turn, been employed as a grocery distributor and as a carpenter.

As evidence of his reputation and character during the past five years petitioner produced three witnesses who have known him for twelve, fourteen and eighteen years, respectively. All three 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 discloses no arrests or convictions other than the two convictions for embezzlement in 1930 and 1933. The Chief of Police of the municipality wherein petitioner resides reports that petitioner has not been arrested nor have any complaints been received against him during the past five years. He has further certified that there are no pending investigations standing against petitioner's name.

It is concluded that petitioner has led a law-abiding life for the last past five years, and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 3rd day of March, 1941,

ORDERED that his statutory disqualification because of the convictions described herein, be and the same is hereby lifted in accordance with the provisions of R. S. 33:1-31.2.

E. W. GARRETT,  
Acting Commissioner.

4. ELIGIBILITY - CONSPIRACY TO STEAL, AND RECEIVING STOLEN GOODS - MORAL TURPITUDE - APPLICANT DECLARED INELIGIBLE FOR EMPLOYMENT BY LIQUOR LICENSEE.

March 4, 1941

Re: Case No. 368

On May 16, 1934, applicant, after pleading guilty to the crime of conspiracy to steal and receiving stolen goods, was sentenced to serve from four to six years in a State Prison; was later transferred to a Reformatory and released on parole on February 12, 1937.

At the hearing held herein, applicant testified that he had been friendly with a girl employed in a County Treasurer's Office; that he had purchased from her about \$1000.00 of municipal scrip, which he supposed she had received as rentals on property owned by her father; that when she was accused of stealing \$5700.00 of scrip from the Treasurer's Office, he pleaded guilty in order to protect her.

Independent investigation disclosed that he had been going with the girl for about three years; that they spent \$2900.00, over a period of about three months, for an auto, jewelry and clothing.

Aside from the fact that the question of guilt or innocence cannot be redetermined herein, the facts of the case show that he was not an innocent victim due to a mistaken belief as to the source of the scrip but, rather, that he knew the scrip had been stolen. The crimes clearly involve moral turpitude.

Applicant, on July 14, 1939, received a restoration to citizenship from the Court of Pardons. However, said restoration to citizenship does not remove his ineligibility under the Alcoholic Beverage Law. Re Tanski, Bulletin 164, Item 12.

It is recommended, therefore, that applicant be advised that he is not eligible to be employed by or connected in any business capacity with a liquor licensee.

Edward J. Dorton,  
Deputy Commissioner  
and Counsel.

APPROVED:

E. W. GARRETT,  
Acting Commissioner.

5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - THIRD DISSIMILAR OFFENSE - 15 DAYS SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against	)	
	)	
RUBIN MARGULIES,	)	CONCLUSIONS
541 Avenue C,	)	AND
Bayonne, New Jersey,	)	ORDER
Holder of Plenary Retail Consumption License C-145, issued by the Board of Commissioners of the City of Bayonne	)	

-----  
Rubin Margulies, Pro se.  
Robert R. Hendricks, Esq., Attorney for the State Department of Alcoholic Beverage Control.

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

The investigation file shows that the sale was made on February 6, 1941, when the defendant-licensee accepted a one dollar bill which had been tendered, by an investigator of this department, in payment for a pint bottle of Kessler's Blended Whiskey. The minimum consumer price at which a pint bottle of this whiskey could be sold, lawfully, at that time, was \$1.15. Bulletin 429.



The Department file discloses that on February 6, 1941 the defendant-licensee sold a one-pint bottle of Wilson "That's All" Blended Whiskey for \$1.15. 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.

The licensee's only explanation to the investigators was that he had "made a mistake." Carelessness is no excuse for violation of the Fair Trade Regulations. Re Blum, Bulletin 422, Item 9.

The minimum penalty for sale below Fair Trade price is ten days. Since the instant offense is the defendant-licensee's first violation of record, the minimum penalty will be imposed.

By entering the 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 5th day of March, 1941,

ORDERED, that Plenary Retail Distribution License D-1, heretofore issued to Teodore Lozito by the Borough Council of the Borough of Somerville, be and the same is hereby suspended for a period of five (5) days, effective March 10, 1941, at 7:00 A.M.

E. W. GARRETT,  
Acting Commissioner.

7. DISCIPLINARY PROCEEDINGS - LOTTERIES AND GAMBLING OF COMMERCIAL PROPORTION - 15 DAYS SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against )

AUGUST TEXTOR, )  
T/a Tex's Tavern, )  
5801 Hudson Avenue, )  
West New York, N. J. )

CONCLUSIONS  
AND  
ORDER

Holder of Plenary Retail Consumption License C-50, issued by the Board of Commissioners of the Town of West New York. )  
-----

August Textor, Pro Se.  
Robert K. Hendricks, Esq., Attorney for the State  
Department of Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to allowing and permitting gambling and a lottery to be conducted, on his licensed premises, in violation of Rules 6 and 7 of State Regulations No.20.

The investigation file shows that on January 31, 1941 investigators of this Department entered the licensed premises and discovered Charles A. Wagner, who was sitting at the bar in full view of the defendant-licensee, busily engaged with racing forms and betting slips. Further search of the licensed premises revealed several punch boards, "Treasury Card" lottery tickets and other lottery paraphernalia on the back bar and underneath the bar.

In a statement voluntarily given to the state agents, Wagner admitted that the slips, which were found in his possession, represented participation rights in a horse race betting pool that he was conducting among the patrons of the tavern. The defendant-licensee, in a separate statement, stated that he permitted Wagner, who was out of work, to sell chances on the punch boards, in order to "help him out", and that the lottery tickets, which were found in a cigar box on the back bar, were sold, on a commission basis, by his own son.

The minimum penalty for permitting gambling on licensed premises is ten days. In view of the fact that the instant violation embraces several different phases of gambling activity, some being commercial in nature, a penalty exceeding the minimum for this type of violation is indicated. The license will, therefore, be suspended for fifteen days instead of ten. Were it not the defendant-licensee's first offense, the penalty would be more severe.

By entry of the guilty plea, the Department has been saved the time and expense of proving its case. Five days of the penalty will, therefore, be remitted.

Accordingly, it is, on this 5th day of March, 1941,

ORDERED that Plenary Retail Consumption License C-50 heretofore issued to August Textor by the Board of Commissioners of the Town of West New York, be and the same is hereby suspended for a period of ten (10) days, effective March 10th, 1941, at 7:00 A.M.

E. W. GARRETT,  
Acting Commissioner.

8. APPELLATE DECISIONS - RANDO v. BURLINGTON.

NOISE, DISTURBANCE AND ALLOWING THE LICENSED PLACE OF BUSINESS TO BECOME A NUISANCE - RENEWAL DENIED - DENIAL AFFIRMED.

ANTONIO RANDO,	:	
Appellant,	:	On Appeal
-vs-	:	
	:	CONCLUSIONS AND ORDER
COMMON COUNCIL OF THE CITY	:	
OF BURLINGTON,	:	
Respondent.	:	

Maurice S. Fayman, Esq., Attorney for Appellant.  
Various Objectors, Pro Se.  
No appearance on behalf of Respondent.

This appeal is from refusal by respondent, the Common Council of the City of Burlington, to renew the plenary retail consumption license of appellant, Antonio Rando, for his tavern at Green Street and Linden Avenue in that City.

Respondent's vote on the resolution for such renewal was tied at 6-6, thus resulting in the failure of the resolution to carry.

Because of such tie vote, no answer was filed by respondent nor was it represented at the hearing on this appeal. However,

it sufficiently appears from the evidence that the reason for the negative votes was the protest and testimony of objectors that appellant had been misconducting his tavern.

Appellant has been operating such tavern since 1935. The neighborhood is business and low-grade residential in character, where colored folk predominate. It is described as "kind of tough" and, judging from the evidence, is indubitably boisterous, requiring, at least at times, more than the normal police patrol. There is a poolroom across the street from the tavern; a lunch wagon a short distance away; and another tavern some three or four blocks away.

At the hearings on appeal, Mr. and Mrs. Joseph Zoppina (the appellant's son-in-law and daughter, both of whom are seemingly on unfriendly terms with appellant), Mr. and Mrs. Sam Jacoby and Margaret Cavallero, all nearby residents in the neighborhood, testified, in sum, that there have been many actual brawls and fights at the tavern or by patrons just outside; considerable noise from the tavern during the late hours; much profane language from patrons (both while in the tavern and when leaving it) that is audible in the neighborhood; and patrons (men and women) urinating in the street.

There is also evidence from some of these witnesses that, on several occasions from 1936 to 1938, cans of beer were sold to minors of young age at the tavern (but for use apparently by the minors' parents and not the minors themselves), and that, during the Spring of 1939, appellant was, on at least some five or six Sunday mornings, doing business in the tavern's back room during locally prohibited hours.

On the other hand, appellant claims that there has been no misconduct at the tavern; that the neighborhood, since noisy to begin with, is not made any the worse by the presence of the tavern; that, although arrests have been made at his tavern, at least some of them were the result of appellant's calling the police either to quell disturbances or to "tip off" the police that some person whom they were looking for was then at the tavern.

Appellant's testimony was corroborated by his son who helps out at the tavern; by a special officer whom appellant has had at the tavern for week-ends since about December 1939 and who lives in the neighborhood; and also by three other neighbors in the vicinity, John L. Krok, Helen Zilkowski and Alex Carnivale.

Captain Bowley of the local Police Department and the various police officers (Lawrence, Patt and Estilow) who have been patrolling the beat in this neighborhood testified that, although the appellant's tavern has been disturbing in the past, they believe this condition has tended to disappear.

However, one of these police officers (Lawrence) was at one time heard to say, in June 1940, that appellant's tavern "was one of the worst places" and that he (the officer) "had more rowdiness up there on Thursday, Friday and Saturday than at any other place in town." This same officer apparently further declared at the hearing on appeal that, when the tavern closes, "you would think a riot had begun." Mayor Johnson testified that Captain Bowley had informed him, in April 1940, that there was trouble regularly at

this tavern, and that "drunken brawls and fights" were occurring there. Indeed, the special officer hired at the tavern by appellant admitted that patrons sometimes "get a little too much and get noisy."

Now, in view of all the evidence, and discounting much of what Zoppina and his wife say because of their unfriendliness with appellant, I am satisfied that this tavern has apparently been conducted as a nuisance; that, in any event, appellant, upon whom rests the burden of proof on the issue, has not successfully proved to the contrary. In view of such finding, and the further fact that in May 1938 the appellant's license was suspended by respondent for ten days for employing a minor (his son), I cannot say that any refusal here to renew should be deemed unreasonable.

However, a councilman who originally voted against the renewal on the 6-6 tie testified, on the appeal, that he and another councilman, who likewise originally voted against renewal, thereafter had reconsidered and changed their minds. Indeed, after the various hearings on the appeal, respondent adopted a resolution, 6-4, favoring reversal in this case.

Such councilman explained the change of mind by himself and the other councilman by stating that this whole matter was really a family fight between appellant and the Zoppinas (his daughter and son-in-law), and that there was no actual evidence that the tavern was being misconducted. Now, since there was, at least at the hearings on appeal, substantial evidence of misconduct, I cannot take such explanation as justifying any reversal in this case. So far as I can see, the first reaction of these councilmen, who later changed their minds, was actually the correct one.

In view of the foregoing, I deem that respondent's action should be affirmed.

Accordingly, it is, on this 5th day of March, 1941,

ORDERED that the instant appeal be and hereby is dismissed, and that the Order heretofore entered in this case extending appellant's old license and permitting him to operate thereunder pending disposition of this appeal be and hereby is cancelled forthwith and that appellant immediately cease any alcoholic beverage business at the premises in question.

E. W. GARRETT,  
Acting Commissioner.

- 9. DISCIPLINARY PROCEEDINGS - SALES OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - 10 DAYS SUSPENSION - CARD PLAYING FOR MONEY - 5 DAYS SUSPENSION - WRITING AND SELLING OF NUMBERS - 5 DAYS SUSPENSION - TOTAL: 20 DAYS.

In the Matter of Disciplinary Proceedings against  
 THOMAS AND DANIEL LAWSON,  
 245 Academy Street,  
 Newark, N. J.  
 Holders of Plenary Retail Consumption License C-788, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS  
 AND  
 ORDER

-----  
 Carl J. Yagoda, Esq., Attorney for Licensee.  
 Richard E. Silberman, Esq., Attorney for  
 Department of Alcoholic Beverage Control.

Charges were served upon the licensees, alleging:

"1. On or about October 30, 1940 you sold one (1) pint bottle of Wilson 'That's All' Blended Whiskey, and on or about November 18, 1940, you sold one (1) pint bottle of Park & Tilford Reserve Whiskey below the minimum consumer prices published in Bulletin 416 of this Department, in violation of Rule 6 of State Regulations 30.

"2. On or about October 28, October 29 and October 30, 1940 you allowed, permitted and suffered gambling on your licensed premises in that you allowed, permitted and suffered card playing for money in violation of Rule 7 of State Regulations 20.

"3. On or about October 29, October 30 and November 18, 1940 you allowed, permitted and suffered a lottery to be conducted and tickets and participation rights in a lottery to be sold and offered for sale on and about your licensed premises in that you permitted the writing and selling of 'numbers', in violation of Rule 6 of State Regulations 20."

As to (1): Investigator Webster of this Department testified that on October 30, 1940, while he was in the licensed premises, Thomas Lawson, one of the licensees, sold a pint of Wilson "That's All" Blended Whiskey to Investigator Wagi for \$1.25. The minimum fair trade price of said item was \$1.33. Thomas Lawson admits that, at the time of the sale, he received only \$1.25 but alleged that he told Wagi "You can go for that and pay me the eight cents when you come in again." This excuse has a familiar ring because it has been so frequently used by licensees. In view of Investigator Webster's testimony that no such statement was made, I find the licensees guilty as to the sale of Wilson "That's All" Blended Whiskey.

Investigator Webster further testified that on November 18, 1940, while he was present, Daniel Lawson, the other licensee, sold a pint bottle of Park & Tilford Reserve whiskey to Investigator Wagi for \$1.25. The minimum fair trade price of said item was \$1.30. Daniel Lawson testified that Investigator Wagi had purchased a number of drinks and the bottle of whiskey; that Wagi had paid him \$1.70 or

\$1.75 for the drinks and the bottle. However, Investigator Webster testified that the drinks had first been paid for and that the sale of the bottle of Park & Tilford Reserve Whiskey was an entirely separate transaction.

On the evidence, I find the licensees guilty as to the first charge.

As to (2): On each of his visits to the licensed premises on October 28, 29 and 30, 1940, Investigator Webster observed a number of men seated around a table in the rear room playing cards. He testified that, at the end of each game, the losers would pay the winners small sums of money by passing the money across the table.

A number of reputable witnesses were produced by the licensees, who testified that while they frequently played cards upon the licensed premises, they never played for money. It does not appear that any of these witnesses were in the licensed premises at the times referred to by the investigator. I do not believe the licensees' explanation that the money which the investigator saw at the table was being collected to purchase new decks of cards. I am satisfied from the evidence that, on each occasion, the patrons were playing cards for money, although the stakes appear to have been small.

I find the licensees guilty as to the second charge.

As to (5): The licensees occasionally employed one Edward Burwell to clean up the premises. Burwell was engaged in writing "numbers" as a side-line and both licensees knew that he was so engaged. Apparently, however, they insisted that he step out of the tavern before actually writing down the numbers so that they might not be accused of permitting gambling on the premises. Investigator Webster testified that, on October 29, 1940, he handed a quarter to Burwell in the licensed premises to play on number 158; that on October 30, 1940 he handed Burwell a quarter in a rear room to play on another number; that on November 18, 1940, he handed twenty cents to Burwell in the licensed premises to play on a certain number and that Burwell, after obtaining paper from Daniel Lawson, left the premises and returned in a few moments with papers containing the number to be played, a duplicate of which he gave to the investigator.

The evidence shows that the licensees and their agent, Johnson, the bartender, had knowledge of Burwell's activities and that they permitted tickets in a lottery to be sold and offered for sale on and about the licensed premises.

Licensees contend that the third charge should be dismissed because they were discharged in criminal proceedings for aiding and abetting Burwell in conducting a lottery. However, there is no question of double jeopardy here involved. As was said in Helvering vs. Mitchell, 303 U.S. 391:

"\*\*\*The double jeopardy clause prohibits merely punishing twice or attempting a second time to punish criminally for the same offense."

The present proceeding concerns the suspension or revocation of a privilege granted and is not a criminal proceeding. I find the licensees guilty as to the third charge.

As to penalty: The minimum penalty for a first offense of violating the fair trade regulations is ten days. There appear to be no aggravating circumstances and I shall impose a penalty of ten days' suspension on the first charge; an additional penalty of five days will be imposed on the second charge; and a further penalty of five days on the third charge, making a total suspension of twenty days.

Accordingly, it is, on this 7th day of March, 1941,

ORDERED that Plenary Retail Consumption License C-788, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Thomas and Daniel Lawson, be and the same is hereby suspended for a period of twenty (20) days, effective March 15, 1941, at 3:00 A.M.

E. W. GARRETT,  
Acting Commissioner.

- 10. CLUBS - CLUB LICENSES ARE NOT ISSUABLE TO COMPANIES ORGANIZED MERELY TO HOLD TITLE TO PREMISES, BUT ONLY TO ORGANIZATIONS OPERATED FOR BENEVOLENT, CHARITABLE, FRATERNAL, SOCIAL, RELIGIOUS, RECREATIONAL, ATHLETIC, OR SIMILAR PURPOSES AND NOT FOR PRIVATE GAIN - APPLICATION DENIED.

In the Matter of Application :  
for a Club License by :

SALEM EAGLES HOME ASSOCIATION,  
232 East Broadway,  
Salem, New Jersey.

CONCLUSIONS  
AND  
ORDER

George S. Friedman, Esq., Attorney for Applicant.  
Mortimer Katz, Esq., Attorney for Grand Aerie of Fraternal Order of Eagles, an Objector.

This application by the Salem Eagles Home Association for a club liquor license for its premises in Salem is made to this Department, instead of the Salem Common Council, because several members of the Association are also members of the Common Council. See R.S. 33:1-20.

Written objection being filed against the issuance of this license, hearing was accordingly held thereon. Cf. Rules 11 and 12 of State Regulations No. 1, and Rules 6 and 7 of State Regulations No. 2.

At the very outset, it appears, from applicant's certificate of incorporation and other evidence at the hearing, that applicant, a non-pecuniary corporation, is merely a holding company with title to the premises in question for the benefit of another non-pecuniary corporation - viz., the Salem Aerie (or local chapter) of the Fraternal Order of Eagles. Because of such fact, the Grand (or head) Aerie of that fraternal order, the objector herein, claims that the Salem Eagles Home Association, as distinguished from the Salem Aerie, is not qualified for a club license.

Such contention is well taken. The Alcoholic Beverage Law mandatorily requires that an organization, to obtain a club

license, must be "operated for benevolent, charitable, fraternal, social, religious, recreational, athletic, or similar purposes..." See R.S. 33:1-12(5). The applicant, since merely a holding company for the premises in question, actually performs none of these listed or similar functions and hence does not meet the express statutory requirement.

It cannot be successfully argued that, since applicant's members are exactly or substantially the same as the members of the local Aerie, applicant should here be identified with that Aerie and hence be viewed as a social and fraternal club. The two groups, being actually separate corporations, are therefore separate legal entities and must be so viewed in application for a liquor license. If the Salem Aerie, which is really the club organization, wants a club license, that corporation, and not the present applicant, which is merely the Aerie's holding company for its club quarters, must apply.

Accordingly, in view of the foregoing, it is, on this 8th day of March, 1941,

ORDERED that the present application be and hereby is denied.

*E. W. Garrett*

E. W. Garrett  
Acting Commissioner.

