

STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark, 2, N. J.

BULLETIN 730

SEPTEMBER 18, 1946.

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STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark, 2, N. J.

BULLETIN 730

SEPTEMBER 18, 1946.

1. LIMITATION OF NUMBER OF RETAIL LICENSES - PETITION FOR DETERMINATION UNDER SECTION 7, CHAPTER 147, P. L. 1946, THAT FAILURE TO APPLY FOR RENEWAL WAS DUE TO CIRCUMSTANCES BEYOND CONTROL OF LICENSEE - PETITION GRANTED.

In the Matter of an Application by )

JOHANNES THOMSEN )  
363 Portia Street )  
South Amboy, N. J., )

ON PETITION  
DETERMINATION

For Relief under the Provisions of )  
Section 7 of Chapter 147 of the )  
Laws of 1946. )

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John Hanson, Jr., Esq., appearing for Johannes Thomsen.

Petition herein recites that Johannes Thomsen was the holder of a 1945-1946 plenary retail consumption license (issued by the Common Council of the City of South Amboy) for premises at 267 First Street. The license expired by its terms at midnight June 30, 1946.

The petition further recites that, on August 30, 1945, the petitioner was served with a notice to vacate the licensed premises on November 1, 1945; that the petitioner was unable to secure an extension from the owner and vacated the premises on November 1, 1945; that the petitioner made diligent efforts to rent or purchase a building to which to transfer his license and was nevertheless unable to secure one until August of 1946, when he was able to lease premises at 114 South Broadway, South Amboy. The petition's prayer is for a determination by the State Commissioner in accordance with the provisions of Section 7 of Chapter 147 of the Laws of 1946.

Subsequent to the filing of the petition, the petitioner and his attorney appeared at the Department's offices for the purpose of stating more fully the facts in this case. At the informal hearing, granted and held for the indicated purpose before the Acting Commissioner on August 30, 1946, detailed facts were presented to show the various efforts made by the petitioner, through his attorney, to secure new premises. In the light of that showing, I am convinced that over a period from August, 1945 until new premises were finally found in August, 1946, continuous and diligent efforts were made by the petitioner's attorney to secure new premises and that the failure sooner to secure such premises by rent or purchase was occasioned by no lack of all reasonable, full and repeated efforts to do so.

At the regular meeting of the Common Council of the City of South Amboy held August 27, 1946, there was presented Johannes Thomsen's application for a plenary retail consumption license for premises at 114 South Broadway. The City Clerk's letter to this Department, dated August 28, 1946, advises that publication and other requirements having been complied with; a public hearing having been held on the application and no objections offered; the Council by unanimous vote authorized that the "License be issued to Johannes Thomsen for premises at 114 South Broadway, Provided the Department of Alcoholic Beverage Control would approve the issuance."

Under all the facts and circumstances of this case, I hereby determine that the applicant's failure to apply for a renewal of his 1945-1946 license was due to circumstances beyond his control. (See Section 7, Chapter 147 of the Laws of 1946). In view of this determination, and there being no South Amboy limitation ordinance prohibiting the issuance of a new license, the Common Council of the City of South Amboy has authority pursuant to Revised Statutes, 33:1-19 to proceed to the issuance of a plenary retail consumption license to Johannes Thomsen despite the limitation of such licenses set forth in Section 2, Chapter 147 of the Laws of 1946.

ERWIN B. HOCK  
Deputy Commissioner.

Dated: September 10, 1946.

2. LIMITATION OF NUMBER OF RETAIL LICENSES - ORDER AMENDING PREVIOUS DETERMINATION UNDER SECTION 7, CHAPTER 147, P. L. 1946.

In the Matter of an Application )  
by )  
JOHN J. WEINMANN )  
115 Chancery Lane )  
Trenton, N. J., )  
For Relief under the Provisions )  
of Section 7 of Ch. 147 of the )  
Laws of 1946. )  
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ORDER AMENDING  
DETERMINATION

Henry C. Schragger, Esq., Attorney for Applicant.

On August 21, 1946, a determination was entered in the above matter. Re Weinmann, Bulletin 727, Item 5. Thereafter the application for a license for premises known as 542 East State Street was denied by the Board of Commissioners of the City of Trenton because of the location of the premises sought to be licensed. On or about August 26, 1946, and within sixty days following the expiration of the license renewal period, John J. Weinmann applied to the Board of Commissioners of the City of Trenton for a new license for premises known as 24 Passaic Street, Trenton. No objections having been filed, said Board of Commissioners, at its meeting on September 5, 1946, granted said application for a license.

Because of the facts set forth above, John J. Weinmann has applied to me for an order amending the determination heretofore entered herein by substituting "24 Passaic Street" in place of "542 East State Street" in the last paragraph of said determination. No reason appearing to the contrary,

It is, on this 11th day of September, 1946,

ORDERED, that the determination heretofore entered herein be amended by substituting "24 Passaic Street" in place of "542 East State Street" in the last paragraph of said determination.

ERWIN B. HOCK  
Deputy Commissioner.

3. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against )

LOLA G. RILEY )  
T/a HARBOR INN )  
501 Dock Street )  
Wildwood, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-47, issued by the Board of Commissioners of the City of Wildwood. )  
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Carl Kisselman, Esq., Attorney for Defendant-licensee.  
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

Defendant pleaded non vult to a charge alleging that she possessed a 4/5 quart bottle labeled "Carstairs White Seal Blended Whiskey" which contained an alcoholic beverage not genuine as labeled, in violation of R. S. 33:1-50.

During an inspection of defendant's premises on July 30, 1946, an ABC agent tested fifteen bottles of the open stock of liquor and seized the bottle in question. Analysis by the ABC chemist disclosed that the contents of the bottle contained whiskey other than that called for by the label.

Defendant denies any knowledge of the violation. However, the licensee must be held strictly responsible for any "refills" found in her stock of liquor. Re Kurian, Bulletin 517, Item 2.

Defendant has no previous adjudicated record. Therefore, I shall suspend her license for a period of fifteen days. Re Rudolph, Bulletin 680, Item 1.

Accordingly, it is, on this 13th day of September, 1946,

ORDERED, that Plenary Retail Consumption License C-47, issued by the Board of Commissioners of the City of Wildwood to Lola G. Riley, t/a Harbor Inn, for premises 501 Dock Street, Wildwood, be and the same is hereby suspended for a period of fifteen (15) days. Pursuant to notice of August 23, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK  
Deputy Commissioner.

4. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary Proceedings against  
 MICHAEL & MARY FRANEK  
 323 Rutherford Avenue  
 Franklin Borough, N. J.,  
 Holder of Plenary Retail Consumption License C-8, issued by the Mayor and Common Council of the Borough of Franklin.

CONCLUSIONS AND ORDER

Dolan and Dolan, Esqs., by John T. Madden, Esq., Attorneys for Defendant-licensees.  
 William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

Defendants pleaded non vult to a charge alleging that they possessed a 4/5 quart bottle labeled "Lord Calvert Blended Whiskey", the contents of which were not genuine as labeled, in violation of R. S. 33:1-50.

On June 21, 1946, an investigator of the State Department of Alcoholic Beverage Control seized the bottle mentioned in the charge when preliminary tests indicated that the contents were "off" in coloring. Subsequent analysis by the departmental chemist disclosed that the contents of the seized bottle were not genuine as labeled.

Defendants and their employees deny any knowledge of the violation. However, the licensees must be held strictly responsible for any "refills" found in their stock of liquor. Re Kurian, Bulletin 517, Item 2.

Defendants have a previous adjudicated record. On May 13, 1942, the local issuing authority found Mary Franek (who then held the license individually) guilty of the sale of alcoholic beverages during prohibited hours on Sunday, in violation of a local ordinance, and also of sale of alcoholic beverages off the licensed premises, in violation of R. S. 33:1-2. The issuing authority suspended the license for five days for these violations and immediately thereafter suspended the operation of the suspension itself. Under all the circumstances, I shall suspend defendants' license in this case for a period of twenty days.

Accordingly, it is, on this 13th day of September, 1946,

ORDERED, that Plenary Retail Consumption License C-8, issued by the Mayor and Common Council of the Borough of Franklin to Michael & Mary Franek, for premises 323 Rutherford Avenue, Franklin Borough, be and the same is hereby suspended for a period of twenty (20) days. Pursuant to notice of August 23, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK  
Deputy Commissioner.

5. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against )

GUSTAVE BUCHNER & FRED G. JOERGENS )

T/a GUS & FRED'S TAVERN )  
742 Lyons Avenue )  
Irvington 11, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-13, issued by the Board of Commissioners of the Town of Irvington. )  
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Samuel J. Kaufman, Esq., Attorney for Defendant-licensees.  
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

The defendants pleaded not guilty to a charge alleging that, on May 15, 1946, they possessed a 4/5 quart bottle of "Canadian Club Blended Canadian Whisky", which bottle contained an alcoholic beverage not genuine as labeled, in violation of R. S. 33:1-50.

The defendants do not dispute that, on May 15, 1946, a Federal ATU agent seized the bottle in question and that, upon chemical analysis, the contents of said bottle were found to vary substantially from a genuine sample of the same product.

The defense is limited to the testimony of one of the defendants who executed an affidavit on May 16, 1946 for the Federal agent. In that affidavit the defendant relates that, on May 11, 1946, one of the defendants' "steady customers advised me that these men (patrons of the defendant) had tampered with the Canadian Club bottle". Even if it be assumed that this proof establishes the manner in which the refilling occurred, it affords no excuse for the offense. The mere possession of illicit alcoholic beverages on licensed premises constitutes the violation. See R. S. 33:1-50. Moreover, the defendants retained the bottle as part of their regular liquor stock for at least four days after the proposed tampering which is alleged to have occurred on May 11, 1946.

I find the defendants guilty as charged.

Since the defendants' record is otherwise clear of any violations, I shall impose the usual fifteen-day penalty for the instant offense. Cf. Re Rudolph, Bulletin 680, Item 1.

Accordingly, it is, on this 13th day of September, 1946,

ORDERED, that Plenary Retail Consumption License C-13, issued by the Board of Commissioners of the Town of Irvington to Gustave Buchner and Fred G. Joergens, t/a Gus & Fred's Tavern, 742 Lyons Avenue, Irvington, be and the same is hereby suspended for a period of fifteen (15) days. In accordance with notice of August 23, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK  
Deputy Commissioner.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR -PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS.

In the Matter of Disciplinary )  
Proceedings against )

THOMAS MILONAKIS )  
T/a ACTAION GRILL )  
1001-1009 Ocean Avenue )  
Asbury Park, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-12 issued by the )  
City Council of the City of )  
Asbury Park. )  
----- )

Thomas Milonakis, Defendant-licensee, Pro se.  
William F. Wood, Esq., appearing for Department of Alcoholic  
Beverage Control.

The defendant pleaded guilty to a charge alleging that on July 12, 1946 he possessed a 4/5 quart bottle of "Old Grand-Dad Kentucky Straight Bourbon Whiskey", which bottle contained an alcoholic beverage not genuine as labeled, in violation of R. S. 33:1-50.

In the absence of any prior record, the normal penalty for a violation of this kind is a suspension for a period of fifteen days. Cf. Re Rudolph, Bulletin 680, Item 1. However, the defendant's license has heretofore been twice suspended for sales of alcoholic beverages to minors, once in September, 1943, and again in October, 1944. Under all of the circumstances, I shall suspend the defendant's license for a period of thirty days.

Accordingly, it is, on this 13th day of September, 1946,

ORDERED, that Plenary Retail Consumption License C-12, issued by the City Council of the City of Asbury Park to Thomas Milonakis, t/a Actaion Grill, for premises 1001-1009 Ocean Avenue, Asbury Park, be and the same is hereby suspended for a period of thirty (30) days. In accordance with notice of August 23, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK  
Deputy Commissioner.

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against  
 MORRIS KRUMHOLZ & ABRAHAM CHARNICK  
 270 Mulberry Street  
 Newark 5, N. J.,

CONCLUSIONS AND ORDER

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 Holders of Plenary Retail Consumption License C-574, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Morris Krumholz and Abraham Charnick, Defendant-licensees, Pro se. William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

The defendants pleaded non vult to a charge alleging that, on May 8, 1946, they possessed a 4/5 quart bottle of "Four Roses Fine American Whiskey A Blend of Straight Whiskies" and a 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky", both of which bottles contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

The defendants have no previous record. I shall impose a penalty of fifteen days. Cf. Re Nurse, Bulletin 680, Item 7.

Accordingly, it is, on this 13th day of September, 1946,

ORDERED, that Plenary Retail Consumption License C-574, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Morris Krumholz and Abraham Charnick, for premises 270 Mulberry Street, Newark, be and the same is hereby suspended for a period of fifteen (15) days. In accordance with notice of August 23, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK  
Deputy Commissioner.

8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 25 DAYS.

In the Matter of Disciplinary Proceedings against )

CAL'S BAR, INC. )  
500 Broadway )  
Newark 4, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-523, issued by the )  
Municipal Board of Alcoholic Beverage Control of the City of )  
Newark. )  
----- )

Defendant-licensee, by Frank Calabrese, President.  
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded non vult to a charge that it possessed illicit alcoholic beverages at its licensed premises, in violation of R. S. 33:1-50.

On May 15, 1946, an inspector of the ATU, Internal Revenue Service, U. S. Treasury Department, seized two 4/5 quart bottles of whiskey labeled "Canadian Club Blended Canadian Whisky" and three 4/5 quart bottles labeled "Calvert Reserve Blended Whiskey", when his field tests indicated that the contents of said five bottles were not genuine as labeled. Subsequent analysis by the chemist employed by said Federal department leads to the conclusion that said bottles had been at least partially refilled with another whiskey.

It is claimed that none of the officers of defendant corporation had any knowledge of the contents of the seized bottles except as disclosed on the labels. Possession of illicit beverages by a licensee goes to the very root of control and mere "possession" is sufficient to support a finding of guilt under these charges. Re Cutter, Bulletin 479, Item 12.

I find defendant guilty.

The minimum suspension for a "five-bottle refill case" is twenty-five days. Re Betz, Bulletin 726, Item 6. Defendant has no previously adjudicated record. I shall suspend its license for twenty-five days.

Accordingly, it is, on this 16th day of September, 1946,

ORDERED, that Plenary Retail Consumption License C-523, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Cal's Bar, Inc., for premises 500 Broadway, Newark, be and the same is hereby suspended for a period of twenty-five (25) days. In accordance with notice of August 23, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK  
Deputy Commissioner.

9. SEIZURE - FORFEITURE PROCEEDINGS - SUGAR INTENDED FOR USE IN  
MANUFACTURE OF ILLICIT ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on ) Case No. 7018  
July 19, 1946 of 71 - 100 lb. bags )  
of sugar at 5500 Madison Street, ) ON HEARING  
in the Town of West New York, County ) CONCLUSIONS AND ORDER  
of Hudson and State of New Jersey. )

Hirschberg, Nashel, Zorn & Cronson, Esqs., by Louis L. Cronson, Esq.,  
Attorneys for Frank Marzigliano and James Cipullo.  
Harry Castelbaum, Esq., appearing for the Department of Alcoholic  
Beverage Control.

This matter has been heard pursuant to the provisions of Title  
33, Chapter 2 of the Revised Statutes, to determine whether 71 - 100  
lb. bags of sugar seized on July 19, 1946 at 5500 Madison Street,  
West New York, New Jersey, constitute unlawful property and should  
be forfeited.

West New York police officers seized the sugar in Frank  
Marzigliano's garage located at the above address, after Marzigliano  
and his employee, James Cipullo, who permitted the sugar to be  
placed there, disclaimed any interest in such sugar.

Cipullo's story is that on Wednesday, July 17, at about 6:30  
p.m., a strange man entered Marzigliano's poultry market, at another  
address, told Cipullo that he had a truck which had broken down, and  
asked him where he could store the merchandise in the truck overnight.  
After some discussion, Cipullo suggested the use of Marzigliano's  
garage.

Cipullo then accompanied the man to the garage and told him that  
after he placed the merchandise there he could snap the padlock on  
the door and later obtain the key at the market. This man then told  
Cipullo that his name was Arthur Holt and that his firm was the Ajax  
Trucking Co. of 247 Sutton Avenue, Brooklyn, N. Y., gave Cipullo  
\$5.00 for the accommodation, and told him that he would call for the  
merchandise on Thursday morning, July 18th. When the police made the  
seizure in the garage on July 19th, after obtaining information that  
the sugar was there, "Holt" had not as yet returned.

Mr. Marzigliano asserts that he was in Pennsylvania and did not  
return to West New York until the morning of July 19th and, hence,  
knows nothing whatsoever concerning the storage of the sugar in his  
garage.

When the matter came on for hearing pursuant to R. S. 33:2-4,  
the owner of the sugar did not appear to oppose its forfeiture and  
apparently abandoned all claim to such sugar. It is to be noted that  
the notice of hearing, mailed to Ajax Trucking Co. at 247 Sutton Ave.,  
Brooklyn, N. Y., was returned with the post office notation "Unknown".

Frank Marzigliano and James Cipullo appeared at the hearing  
merely to reassert their personal innocence in the matter and not for  
the purpose of making any claim to the sugar.

R. S. 33:2-2 provides, among other things, that all articles,  
etc. used or adaptable for use in connection with an illicit still  
constitute unlawful property.

It is a well known fact that bootleggers have traditionally used  
sugar in the manufacture of illicit alcohol. From the circumstances  
in the instant case, I conclude that the 71 bags of sugar were inten-  
ded for that purpose. The storage of the sugar in a garage selected  
under haphazard circumstances and the fictitious address, allegedly

that of the trucking concern, taken in conjunction with the owner's non-appearance, supports the finding that the sugar was adaptable for and intended for use in connection with the operation of an illicit still. The sugar therefore constitutes unlawful property within the meaning of the above cited provision of the law and is subject to forfeiture. R. S. 33:2-5. Also see Seizure Case No. 6663, Seizure Case No. 6692, Seizure Case No. 7005, Bulletin 728, Item 3, and Seizure Case No. 7017, Bulletin 728, Item 4.

Accordingly, it is DETERMINED and ORDERED that the 71 - 100 lb. bags of sugar seized in the case constitute unlawful property and that the same be and hereby is forfeited in accordance with the provisions of R. S. 33:2-5, 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 State Commissioner of Alcoholic Beverage Control.

ERWIN B. HOCK  
Deputy Commissioner.

Dated: September 16, 1946.

10. APPELLATE DECISIONS - MEDORE v. ROCKAWAY TOWNSHIP.

MARY MEDORE, trading as )  
CENTRAL TAVERN, )  
 )  
Appellant, )  
 )  
-vs- )  
 )  
TOWNSHIP COMMITTEE OF THE )  
TOWNSHIP OF ROCKAWAY, )  
 )  
Respondent )  
- - - - - )

ON APPEAL  
CONCLUSIONS AND ORDER

William H. Yanowsky, Esq., Attorney for Appellant.  
Elden Mills, Esq., Attorney for Respondent.

This is an appeal from a thirty-day suspension imposed by the Township Committee for the Township of Rockaway, after the appellant had been adjudged guilty of the sale of alcoholic beverages in original containers on Sunday, in violation of Rule 1, Regulations No. 38, and in violation of Section 1 of a Township ordinance.

The suspension was ordered stayed until the determination of this appeal.

This case has given me some concern due to the fact that there is a very substantial difference between the testimony produced before the respondent issuing authority and the Commissioner on appeal. On the basis of the testimony produced before the respondent at the hearing below, the decision reached was undoubtedly correct. However, since appeals are heard de novo, in the instant case I am confronted with a different set of facts. During the course of his testimony given at the hearing of the appeal, one Whittie Jones, the alleged purchaser of the alcoholic beverages referred to in the charge, repudiated a statement which had been previously signed by him and which had been considered by the respondent in reaching its conclusion. In addition, two witnesses who had not testified at the hearing below were produced by the appellant at the hearing of the appeal before me.

In reaching a conclusion herein I am bound to consider all this additional testimony because this is a trial de novo. As the Court said in Cino v. Driscoll, 130 N. J. L. 535:

"It is the duty of the Commissioner to hear, conduct and decide appeals. We construe that duty, in the circumstances exhibited, to mean that the Commissioner is obliged to conduct a hearing on testimony de novo as if that obligation had been expressly stated in the statute."

See also Rule 6 of State Regulations No. 15, which provides:

"All appeals shall be heard de novo, except as otherwise provided in Rule 8 hereof, and the parties may introduce oral testimony and documentary evidence, but the burden of establishing that the action of the respondent issuing authority was erroneous and should be reversed shall rest with the appellant."

The testimony given at the hearing de novo may be summarized as follows: Appellant's tavern is located in the basement of a building, the first floor of which is operated as a grocery store. The entrance to the tavern is in the rear of the building. The grocery store has its entrance in the front of the building facing on the road from Mount Hope to Dover.

On the Sunday morning in question, two investigators of the Department of Alcoholic Beverage Control drove past the grocery store in their automobile and observed several customers in the store. Among these customers was Whittie Jones. The agents stopped their car on a side road so that they would be in a position to observe the entrance to the tavern. They noticed Jones apparently going around the building on two occasions. The agents testified he was empty-handed. When he reappeared the third time, however, Jones was carrying a bag which was found to contain a bottle of whiskey and a quart bottle of beer. Neither of the agents was in a position to observe where Jones had obtained the bag. However, when Jones was stopped by the agents, he stated, according to their testimony, that he had obtained the package in the grocery store from Sam Medore. This explanation was incorporated in a statement signed by Jones some time after he was taken into custody.

At the hearing held herein Jones related an entirely different story as to how he came into possession of the package. He testified that he had purchased the bottle of whiskey and the bottle of beer in one tavern on the previous evening and had placed the paper package containing the bottles in a garbage can standing near the building. Thereafter Jones states he left for Dover where he apparently over-indulged and, as a result, when he returned that evening he was unable to remember where he had left his two bottles. According to his testimony on the appeal, he returned to the grocery store on Sunday morning for the purpose of asking the appellant if she knew what had become of his package; that she had told him she knew nothing about it. Jones explains his trips around the building as being part of his search for his lost liquor, which he says he ultimately found immediately prior to being stopped by the agents.

Sam Medore testified that on Saturday evening, at about 7:30 p.m., he sold a bottle of whiskey and a bottle of beer to Jones, who thereupon left the tavern with the merchandise. Medore related he remembered Jones returning to the tavern later in the evening because he requested him to leave on the ground that he was intoxicated. Medore likewise states that Jones came back to the grocery store on Sunday morning and inquired about the package but left the store before he, Medore, could ascertain the purpose of the inquiry. Some time later, when confronted by Jones and the agents, Medore emphatically denied he had given the package containing the alcoholic beverages to Jones that morning.

Two witnesses testified for appellant, saying they were in the tavern on Saturday evening and saw Jones make the purchase of the bottle of whiskey and the bottle of beer. Both witnesses saw Jones leave the tavern with the beverages. Both witnesses testified they were still in the tavern at the time of Jones' return that evening, and remember hearing Medore request him to leave.

The appellant testified that she was not in the tavern on the Saturday night in question, but that on Sunday morning Jones did enter the grocery store and ask her something about the package. According to her testimony, she said she knew nothing about it. It should be noted that while the agents saw Jones in the grocery store, neither of them saw him leaving the grocery store.

Jones explains his repudiation of his statement given to the agents by saying he was intoxicated and extremely frightened and did not understand the statement when it was read to him.

Jones' improbable explanation finds some support in the fact that he was subsequently adjudged to have been intoxicated on the evening in question and sentenced by the local magistrate to serve thirty days in jail.

The testimony before the Commissioner on appeal is quite different from that presented before the respondent. On the record presented herein I must reverse the action of respondent.

Accordingly, it is, on this 16th day of September, 1946,

ORDERED, that the action of respondent in finding appellant guilty of the aforesaid charge and suspending her license for a period of thirty days, be and the same is hereby reversed.

ERWIN B. HOCK  
Deputy Commissioner.

11. STATE LICENSES - NEW APPLICATIONS FILED.

San Benito Co., Inc.  
963 Newark Ave.  
Elizabeth, N. J.

Application filed September 16, 1946 for transfer of Wine Wholesale License WW-29 from Fiore, Anthony, Emily K. and Albert B. Cribari, t/a B. Cribari & Sons.

ERWIN B. HOCK  
Deputy Commissioner.

12. DISCIPLINARY PROCEEDINGS - "FRONT" - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.

In the Matter of Disciplinary Proceedings against	)	
COLONIAL LIQUOR CORPORATION	)	
11 South Street	)	CONCLUSIONS
Morristown, N. J.,	)	AND ORDER
Holder of Plenary Retail Distribution License D-17 for the 1945-46 and 1946-47 fiscal years, issued by the Board of Aldermen of the Town of Morristown.	)	

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 Michael P. Danna, Esq., Attorney for Defendant-licensee.  
 Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant corporation has entered a plea of nolo contendere to the following charge:

"In your application filed with the Board of Aldermen of the Town of Morristown and upon which you obtained your current plenary retail distribution license, you, after listing your stockholders as follows - Sol H. Grabelle 90 shares, Michael P. Danna 820 shares, and Harry Rosenzweig 90 shares, falsely stated 'No' in answer to Question 24 which asks: 'Has any stockholder of the applicant corporation any beneficial interest, directly or indirectly, in the stock of any other stockholder of the applicant corporation?', whereas in truth and fact Sol H. Grabelle and Harry Rosenzweig were the real and beneficial owners of the shares of stock listed in Michael P. Danna's name; such false statement being in violation of R. S. 33:1-25."

The facts disclosed that the defendant corporation at the time of the filing of the charge held a plenary retail distribution license for premises located at 11 South Street, Morristown, N. J. The premises were operated as a combination drug and liquor store. The corporation at the time of the filing of the charge had issued and outstanding 1,000 shares of stock held by three stockholders, to wit: Michael P. Danna, 820 shares; Sol H. Grabelle, 90 shares, and Harry Rosenzweig, 90 shares. Grabelle and Rosenzweig also operated the drug business located in the said premises under the name of "Ace Drugs."

The local ordinance in effect at the time of the issuance of the license provided that no individual could hold a retail liquor license or be the owner of more than ten per cent of the capital stock of the corporate licensee unless he had been a resident of Morristown for two years. Grabelle and Rosenzweig did not possess such qualifications at the time of the issuance of the license.

While Michael P. Danna strongly insists upon the genuineness of the entire transaction, nevertheless he states that he would prefer, on behalf of the corporation, to enter a plea of nolo contendere and to dispose of his stock holdings to the two other stockholders -- Grabelle and Rosenzweig. On the facts disclosed by the investigation herein, I find defendant guilty.

Proof has now been submitted that the transfer of stock referred to above has taken place and, in addition, that the local ordinance has been amended so as to permit such stock holdings.

The investigation herein was made and the facts fully disclosed prior to a conference held with the officers of defendant corporation on December 4, 1945. While the charge was not served until after January 1, 1946, the rule laid down in Re Nicomini, Bulletin 686, Item 7, should not apply. Under the circumstances, I shall suspend defendant's license for a period of ten days. Re Tedraydot, Inc., Bulletin 707, Item 11.

Although this proceeding was instituted during the 1945-46 licensing period, it does not abate and any suspension shall apply against the renewal license for the fiscal year 1946-47. State Regulations No. 16.

Accordingly, it is, on this 16th day of September, 1946,

ORDERED, that Plenary Retail Distribution License D-17, issued by the Board of Aldermen of the Town of Morristown to Colonial Liquor Corporation, for premises 11 South Street, Morristown, be and the same is hereby suspended for ten (10) days, commencing at 9:00 a.m. September 23, 1946, and terminating at 9:00 a.m. October 3, 1946.

ERWIN B. HOCK  
Deputy Commissioner.

13. APPELLATE DECISIONS - BALDWIN v. PATERSON AND PERRONE - DISCONTINUED.

GLADYS BALDWIN,	)	
	)	
Appellant,	)	
	)	ON APPEAL
-vs-	)	
	)	ORDER
BOARD OF ALCOHOLIC BEVERAGE	)	
CONTROL OF THE CITY OF PATERSON	)	
and MICHAEL PERRONE,	)	
	)	
Respondents	)	
-----	)	

Peter Cohn, Esq., Attorney for Appellant.  
George Surosky, Esq., Attorney for Respondent Board.  
Charles J. Alfano, Esq., Attorney for Respondent Perrone.

This is an appeal from a transfer of a plenary retail consumption license from one Michael J. Tracey to respondent, Michael Perrone. The premises in question are located at 30 Northwest Street, Paterson.

The petition of appeal alleged that Michael Perrone is acting as a "front" for one Robert L. Paton. This is denied by the answers filed herein.

All the interested parties have stipulated that the appeal be discontinued. Since the Commissioner has power to institute disciplinary proceedings if it appears hereafter that a "front" exists, no reason appears why the appeal herein should not be discontinued.

Accordingly, it is, on this 17th day of September, 1946,

ORDERED, that the appeal herein be and the same is hereby discontinued.

ERWIN B. HOCK  
Deputy Commissioner.

14. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN LICENSE APPLICATION (CONCEALING INTEREST IN WHOLESALE LICENSE) - EXERCISING RIGHTS AND PRIVILEGES OF LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR A PERIOD OF 25 DAYS.

In the Matter of Disciplinary Proceedings against )

PETER MUZYKA and CLARA SEGRO )  
T/a PIP'S BAR & GRILL )  
443 Third Street )  
Carlstadt, N. J., )

CONCLUSIONS AND ORDER

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Holders of Plenary Retail Consumption License C-8 issued by the Mayor and Council of the Borough of Carlstadt. )

Peter Muzyka and Clara Segro, Defendant-licensees, Pro se.

Defendants pleaded guilty to the following charges:

"1. In the application filed by Anthony Marino and Nicholas Segro with the Borough Council of the Borough of Carlstadt during the 1945-46 licensing term and upon which they obtained the plenary retail consumption license for premises at 443 Third Street, Carlstadt, N. J., which license was later transferred to you on May 8, 1946 and was thereafter renewed by you for the current 1946-47 term, your said predecessors in interest, Anthony Marino and Nicholas Segro, falsely stated 'No' in answer to Question 39, which asks, 'Are you or is any person mentioned in this application now interested, directly or indirectly, in any other alcoholic beverage license or application therefor in New Jersey?', whereas in truth and fact Nicholas Segro was at such time the holder of a wholesale wine license in New Jersey in partnership with Ralph, Anthony and James Pisacane; such false statement being in violation of R. S. 33:1-25 and you being held accountable under Rule 2 of State Regulations No. 16 for this violation by your predecessors in interest.

"2. In the aforesaid application of your predecessors in interest, they falsely stated 'No' in answer to Question 44, which asks, 'Are you or is any person mentioned in this application interested, directly or indirectly, in any...wholesale liquor concern...either as owner or part owner...?', whereas in truth and fact at such time Nicholas Segro was a part owner in a wholesale wine business for which he, together with other partners, held the above mentioned license; such false statement being in violation of R. S. 33:1-25 and you being held accountable under Rule 2 of State Regulations No. 16 for this violation by your predecessors in interest.

"3. From March 25, 1946 to May 8, 1946, you exercised the rights and privileges of a plenary retail consumption license then being held by Anthony Marino and Nicholas Segro for premises at 443 Third Street, Carlstadt, N. J., whereby you violated R. S. 33:1-26."

The file herein discloses that on February 13, 1946, a plenary retail consumption license which had been issued for the premises in question was transferred from one Mary Palmeri to Anthony Marino and Nicholas Segro. At the time the application for transfer was filed, Nicholas Segro was one of four partners who held a New Jersey Wine Wholesale license and who were going business as Pisacane Wine Company. By the plea entered herein, defendants admit that Anthony

Marino and Nicholas Segro, their predecessors in interest, falsely answered Questions 39 and 44, as alleged in charges (1) and (2) herein.

In a statement given to investigators of this Department, Nicholas Segro alleges that, at the time he signed the application for a transfer, he did not know that it was unlawful for a person to be a partner in a retail liquor business and a partner in the wine wholesale business at the same time. The fact is that R. S. 33:1-43 clearly prohibits a person from being interested in the retailing and wholesaling of alcoholic beverages at the same time. Ignorance of the law cannot be accepted as an excuse even if the explanation given by Nicholas Segro be accepted as true.

On May 8, 1946, the license for the premises in question was transferred by the Mayor and Council of the Borough of Carlstadt from Anthony Marino and Nicholas Segro to the defendants herein, and thereafter renewed by defendants for the present fiscal year. The defendants, however, are responsible for the violation committed by their predecessors in interest. Rule 2 of State Regulations No. 16. This is particularly true in the present case because it appears that Clara Segro, one of the defendants herein, is the wife of Nicholas Segro.

As to charge (3): It appears from the file herein that, although the license was not transferred to the defendants until May 8, 1946, nevertheless they operated the licensed premises between March 25, 1946 (the date upon which they obtained a bill of sale) and May 8, 1946 (the date upon which the transfer was granted).

In fixing a period of suspension herein, I have considered the contention of Nicholas Segro that he never had any intent to violate the law. I have also taken into consideration the fact that, since the violation was committed, Nicholas Segro has ceased to be a partner in the wine wholesaling business. Nevertheless, the violations set forth in charges (1) and (2) are of a serious character because, if the true facts had been disclosed, the local issuing authority would probably have refused to transfer the retail license to Nicholas Segro, who was then disqualified from holding such a license. Under all the circumstances of this case I shall suspend defendants' license for a period of twenty days, less five days for the plea, making a net suspension of fifteen days because of the violations set forth in charges (1) and (2). I shall suspend defendants' license for an additional period of ten days because of the violation set forth in charge (3). Re LaBarba, Bulletin 709, Item 14.

Accordingly, it is, on this 17th day of September, 1946,

ORDERED, that Plenary Retail Consumption License C-8, issued by the Mayor and Council of the Borough of Carlstadt to Peter Muzyka and Clara Segro, t/a Pip's Bar & Grill, for premises 443 Third Street, Carlstadt, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m. September 23, 1946, and terminating at 3:00 a.m. October 18, 1946.

*Erwin T. Hoek*  
Deputy Commissioner.