

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

BULLETIN 653

FEBRUARY 15, 1945

1. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - EMPLOYING DISQUALIFIED PERSON - LICENSE REVOKED.

PREMISES - DISQUALIFICATION PROCEEDINGS - PREMISES DECLARED INELIGIBLE FOR A LICENSE FOR A PERIOD OF TWO YEARS.

In the Matter of Disciplinary Proceedings against

ELNORA ZAKERWSKI,
t/a NORRY'S CAFE,
S/W Cor. Almonesson Road &
Railroad Avenue,
Blenheim, Gloucester Township,
P.O. Blackwood, New Jersey,

Holder of Plenary Retail Consumption License C-12 issued by the Township Committee of the Township of Gloucester.

In the Matter of Affiliate Proceedings to Disqualify the Aforesaid Premises.

CONCLUSIONS

AND

ORDER

Elnora Zakerwski, Defendant-licensee, Pro Se.
Anton Zakerwski, Owner of Premises, Pro Se.
Harry Castelbaum, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee has pleaded non vult to charges alleging that (1) in her application for her current license she evaded and suppressed the material fact that Anton Zakerwski was the real owner of said license and business; such evasion and suppression being in violation of R.S. 33:1-25; (2) from July 3, 1944, until January 8, 1945, she knowingly aided and abetted Anton Zakerwski to exercise, contrary to R.S. 33:1-26, the rights and privileges of her license; thereby violating R.S. 33:1-52; and (3) from July 3, 1944, until January 8, 1945, she knowingly employed on her licensed premises Anton Zakerwski, who was disqualified from said employment by reason of the revocation of his plenary retail consumption license on May 24, 1943, by the State Commissioner; such employment being in violation of R.S. 33:1-26.

Anton Zakerwski is the father-in-law of Elnora Zakerwski. The records of the Department of Alcoholic Beverage Control disclose that on May 24, 1943, the Commissioner of Alcoholic Beverage Control revoked a plenary retail consumption license which was then held by Anton Zakerwski. Re Zakerwski, Bulletin 570, Item 1. As a consequence thereof, he became ineligible to hold or receive any other liquor license for a period of two years from the effective date of the revocation. See R.S. 33:1-31. He also became ineligible to be employed by or connected in any business capacity whatsoever with a liquor licensee during the period of his ineligibility. R.S. 33:1-26; Re J.R., Bulletin 71, Item 9.

In a statement given to ABC investigators, Elnora Zakerwski admitted that her father-in-law is the actual owner of the business; that she has nothing whatsoever to do with the business, and that she had applied for the license in her name because her father-in-law was ineligible to obtain a license. In a statement given to ABC investigators, Anton Zakerwski admitted that he was employed by his daughter-in-law and denied that the business belonged to him. From the evidence I am satisfied that the business actually belonged to Anton Zakerwski and that defendant-licensee is guilty as charged.

The Township Clerk of Gloucester Township has advised me that plenary retail consumption license issued to Elnora Zakerwski for the current fiscal year was surrendered to him on January 8, 1945. Despite this voluntary surrender, I shall, nevertheless, revoke the license of defendant-licensee. This will disqualify her from obtaining any other license or being employed on licensed premises for a period of two years from the date hereof.

Anton Zakerwski, who is the owner of the premises in question, was also called upon to show cause why the licensed premises should not be declared ineligible to become the subject of any further license during a period of two years from the effective date of this revocation. R.S. 33:1-31. He advised me by mail that he had no intention of appearing on the return date of said order but would be guided by my decision in the matter. In view of his deliberate participation in this unlawful scheme, I shall declare the licensed premises ineligible to become the subject of any further alcoholic beverage license for a period of two years from the date of this order.

Accordingly, it is, on this 5th day of February, 1945,

ORDERED that plenary retail consumption license C-12, issued by the Township Committee of the Township of Gloucester to Elnora Zakerwski, t/a Nory's Cafe, for premises on S/W cor. Almonesson Road and Railroad Avenue, Blenheim, Gloucester Township, be and the same is hereby revoked, effective immediately; and it is further

ORDERED that premises known as S/W cor. Almonesson Road and Railroad Avenue, Blenheim, Gloucester Township, be and they are hereby declared ineligible to become the subject of any further license of any kind or class for a period of two years commencing on the date hereof.

ALFRED E. DRISCOLL,
Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR PLEA - CHARGE OF HINDERING INVESTIGATION DISMISSED.

In the Matter of Disciplinary Proceedings against)

PETER GIERWIELANIEC, t/a PETE'S TAVERN, 200 Geneva Street, Elizabeth 1, New Jersey)

CONCLUSIONS

AND

Holder of Plenary Retail Consumption License C-102 issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth.)

ORDER

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Julius Kwalic, Esq., Attorney for Defendant-licensee. Anthony Meyer, Jr., Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to charge (1) which alleges that on Sunday, December 10, 1944, at about 11:00 A.M., he sold, served and delivered alcoholic beverages and allowed the consumption of alcoholic beverages on his licensed premises, in violation of Section 1 of an ordinance of the City of Elizabeth which prohibits such activity between 2:00 A.M. and 12:00 Noon on Sunday. Defendant has pleaded nolo contendere to charge (2) which alleges that, on the occasion aforesaid, he hindered and failed to facilitate an investigation, in violation of R.S. 33:1-35.

AS a result of a complaint that defendant was selling alcoholic beverages before the opening hour on Sunday, two ABC investigators were assigned to watch defendant's premises on the morning of Sunday, December 10, 1944. They arrived in the vicinity of the licensed premises at about 10:00 A.M. At various times between 10:00 A.M. and 10:45 A.M., they observed two men entering and six men leaving through a side door of the building in which the licensed premises are located. This side door permitted entrance to a hallway containing an inner doorway leading to the licensed premises and a stairway leading to living quarters located on the two upper floors of the building.

At about 10:45 A.M. the two investigators walked up the front steps of the building and, looking into defendant's barroom, observed a man at the bar with a full glass of beer and a bottle of beer in front of him talking to the licensee. One of the investigators remained at the front door while the other went to the side door of the building. After entering the hallway, the latter investigator observed, to the left of the inner door leading to the licensed premises, a "peep-hole" with a glass on the outside and a flap on the inside. After the investigator knocked on the inner door, someone looked through the "peep-hole" and then closed the flap. In the meantime the investigator who remained at the front of the building knocked on the front door and displayed his badge against the glass of the door. Thereupon the man who was standing at the bar finished drinking his glass of beer, and the licensee placed the glass in the water used for cleaning glasses. The licensee accompanied the man to a rear room and the man who took the bottle of beer with him left the premises through a rear door.

As to Charge (1): Defendant admits that he is technically guilty, but alleges in mitigation that the man in the barroom was a friend and neighbor and that he supposed he might serve him "the same as serving such a drink in his own home." Disregarding the testimony which would indicate that other patrons may have been in the licensed premises on the morning in question, the testimony concerning the man in the barroom discloses a violation. R.S.33:1-1(w) defines a sale to include the gratuitous delivery or gift of any alcoholic beverages by any licensee. Moreover, the ordinance prohibits also the consumption of alcoholic beverages during prohibited hours and that section applies to consumption by any person, including the licensee and his friends. I find the licensee guilty as to charge (1).

As to charge (2): There is nothing in the case to show that the licensee had any reason to believe that the investigator who appeared at the side door was in fact an ABC investigator. Defendant alleges that he did not immediately open either door because it was Sunday and the place was not open for business. He further alleges that he admitted both investigators within a few minutes after he had reason to believe that they were ABC investigators and that he fully cooperated with them thereafter. The file herein shows that both investigators were admitted shortly after one of them displayed his badge, and that the licensee thereafter cooperated with them in their investigation of the licensed premises. In view of all the circumstances, I shall permit the withdrawal of the plea entered as to charge (2), and shall dismiss charge (2). Re New Elkhorn Tavern, Bulletin 301, Item 10. The defendant is directed to eliminate the "peep-hole". Honest licensees do not need this relic of the Prohibition era. Its presence invites investigation.

Defendant has no prior record. Because of the violation set forth in charge (1), I shall suspend his license for a period of fifteen days, less five days for the plea, making a net suspension of ten days. Re Disbrow, Bulletin 540, Item 3.

Accordingly, it is, on this 6th day of February, 1945,

ORDERED that plenary retail consumption license C-102, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth to Peter Gierwielaniec, t/a Pete's Tavern, for premises 200 Geneva Street, Elizabeth, be and the same is hereby suspended for ten (10) days, commencing at 2:00 A.M. February 12, 1945, and terminating at 2:00 A.M. February 22, 1945.

ALFRED E. DRISCOLL,
Commissioner.

February 2, 1945

TO: Commissioner Driscoll
 FROM: Erwin B. Hock

APPEARANCES BEFORE GRAND JURIES - 1944

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	TOTAL
Number of Inspectors and Investigators appearing before Grand Juries	24	9	32	14	14	23	7	6	37	32	32	21	251
Number of cases in which they appeared	15	5	14	8	10	14	3	2	21	15	15	8	130
Counties in which cases were presented													
Atlantic	-	-	-	-	-	1	1	-	5	-	-	-	7
Bergen	1	-	2	1	1	1	2	2	-	1	-	-	11
Burlington	-	-	-	-	-	-	-	-	1	-	-	-	1
Camden	-	-	1	-	1	1	-	-	-	-	-	-	3
Cape May	-	-	-	-	-	-	-	-	-	1	-	-	1
Cumberland	-	-	-	-	-	-	-	-	-	-	-	-	0
Essex	-	1	1	1	-	-	-	-	3	1	2	-	9
Gloucester	2	-	-	-	1	-	-	-	1	-	-	-	4
Hudson	2	1	-	-	1	2	-	-	-	-	3	-	9
Hunterdon	-	-	-	-	-	-	-	-	-	-	-	-	0
Mercer	1	-	4	2	1	4	-	-	4	4	1	-	21
Middlesex	3	-	3	-	-	1	-	-	2	1	1	2	13
Monmouth	-	-	2	-	-	-	-	-	1	2	8	-	13
Morris	3	-	-	-	1	-	-	-	-	2	-	-	6
Ocean	-	1	-	-	-	-	-	-	-	-	-	1	2
Passaic	-	2	1	-	2	4	-	-	-	1	-	1	11
Salem	-	-	-	1	-	-	-	-	3	-	-	4	8
Somerset	-	-	-	1	-	-	-	-	1	-	-	-	2
Sussex	-	-	-	1	-	-	-	-	-	-	-	-	1
Union	3	-	-	-	2	-	-	-	-	2	-	-	7
Warren	-	-	-	1	-	-	-	-	-	-	-	-	1

3. GRAND JURIES - 1944 APPEARANCES BEFORE

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Erwin B. Hock
 Deputy Commissioner

- 4. DISCIPLINARY PROCEEDINGS - LICENSE SUSPENDED FOR BALANCE OF ITS TERM - LICENSE HAVING BEEN SUSPENDED FOR A PERIOD OF THREE MONTHS AND ILLEGAL SITUATION HAVING BEEN CORRECTED, APPLICATION TO LIFT GRANTED.

In the Matter of Disciplinary Proceedings against

LOUIS and AMELIO POLITO,
t/a Bunny's Tavern,
65 Main Avenue,
Clifton, N.J.

CONCLUSIONS
AND
ORDER

Holders of Plenary Retail Consumption License C-102, issued by the Municipal Council of the City of Clifton.

Grace J. Ford, Esq., Attorney for Defendant-licensees.
Harry Castelbaum, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On October 17, 1944, the license of the defendants was suspended for the balance of the present licensing year, effective October 23, 1944. The suspension resulted from their guilty plea to charges that one Joseph Polito had an undisclosed interest in the license and business conducted thereunder by the defendants. It was determined in the Conclusions that the concealment of such interest was because of Joseph Polito's criminal record. See Re Polito, Bulletin 637, Item 9.

At a supplemental hearing scheduled for the purpose of proving that a complete and bona fide correction of the prior unlawful situation had been made, the defendants gave testimony under oath that Joseph Polito had conveyed to them all of his right, title and interest in and to the license and business conducted thereunder, and they produced documentary evidence in substantiation of this claim. Independent investigation made by ABC agents tends to confirm the validity of the total assignment of Joseph Polito's interest to the defendants. In addition, the defendants agreed that Joseph Polito would not be employed at their premises in any capacity and that he would not be permitted on the premises at any time for any reason whatsoever.

The licensed premises have now been closed for more than three months last past. This is a sufficiently penalizing suspension for the violation committed by the defendants. Cf. Re Figone, Bulletin 630, Item 13. I shall, therefore, lift the suspension with the admonition that, if the said Joseph Polito is found on the licensed premises at any time hereafter, disciplinary proceedings will be instituted against the license then held by the defendants with a view to outright revocation of the license.

Accordingly, it is, on the 6th day of February, 1945,

ORDERED that the suspension heretofore imposed against plenary retail consumption license C-102, issued by the Municipal Council of the City of Clifton to Louis and Amelio Polito, t/a Bunny's Tavern, for premises 65 Main Avenue, Clifton, be and the same is hereby lifted, effective immediately. This order is subject to the special condition that the said Joseph Polito shall not be permitted on the licensed premises at any time hereafter for any reason whatsoever, whether during the present licensing year expiring June 30, 1945 or during the term of any renewal thereof.

ALFRED E. DRISCOLL,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - CHARGE OF SELLING ALCOHOLIC BEVERAGES TO A MINOR, IN VIOLATION OF R.S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20, DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against)

ELIZABETH LEVINE and SAMUEL LEVINE, t/a RICHFIELD TAVERN, State Highway, Route #6, Rockaway, New Jersey,)

CONCLUSIONS

AND

Holder of Plenary Retail Consumption License C-6 issued by the Borough Council of the Borough of Rockaway.)

ORDER

R. Sar Mischiara, Esq., Attorney for Defendant-licensees. Edward F. Ambrose, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendants have pleaded not guilty to charges alleging that on Friday night, July 21, 1944, they sold alcoholic beverages to Robert _____, a minor, in violation of R.S. 33:1-77 and Rule 1 of State Regulations No. 20.

The minor in this case is the same minor referred to in Re Chiappa, Bulletin 636, Item 6.

After leaving the carnival on the evening of July 21, 1944, the four persons mentioned in the case cited herein proceeded by automobile to defendants' premises. Robert and the young man who was over the age of twenty-one years, entered defendants' premises, and the two young ladies remained in the automobile. It is undisputed that at that time Barnet Levine, father of defendant Samuel Levine, and Ida Levine, mother of defendant Samuel Levine, were tending bar.

At the hearing held herein, Robert and his companion testified that the latter ordered from the man two glasses of beer, and that each of them consumed the contents of one glass. Robert testified that thereafter the woman questioned his age, without asking for any identification, and that he and his companion immediately left the premises. His companion testified that the man asked Robert about his age before the first drink was served and that, after the first drink was served, the woman asked Robert if he was old enough to drink and requested him to give proof of his age. This witness testified also that, when Robert could not produce proof of his age, the woman did not serve him and the two young men walked out.

On behalf of defendants, Barnet Levine testified that, on the evening in question, he was tending bar but did not see either of the young men. Ida Levine testified that, when the young men came to the bar, she asked Robert "Can you prove you are twenty-one?" to which question Robert answered "No" and "They walked out". She denied that she or her husband had served either of the young men. Ida Levine's testimony is corroborated by the testimony of a woman and her husband who were patrons in defendants' premises on the evening in question.

It appears that, after the alleged violation and upon being questioned by ABC investigators, both young men signed written statements wherein they said that they had been served by an elderly lady. Thereafter they were taken to defendants' premises by agents of the Department of Alcoholic Beverage Control, but failed to identify either Barnet or Ida Levine. On a subsequent visit one of them said "I think it is the old man served us".

Considering the confusing testimony given by the Department's witnesses who had consumed a large quantity of beer earlier in the evening, and the testimony given by Barnet Levine, Ida Levine and two disinterested witnesses, wherein it is denied that any alcoholic beverages were served to or consumed by the minor in defendants' premises, I conclude that the Department has not sustained the burden of proof in establishing the guilt of defendants.

While the defendants have escaped serious punishment in this case because of a doubt existing in my mind as to their guilt, I am putting them on notice that they will be held strictly accountable for the future conduct of their premises and, in particular, they must take all necessary precautions to prevent the consumption of alcoholic beverages by minors on their licensed premises.

Accordingly, it is, on this 7th day of February, 1945,

ORDERED that the charges herein be and the same are hereby dismissed.

ALFRED E. DRISCOLL,
Commissioner.

- 6. SEIZURE - FORFEITURE PROCEEDINGS - ILLEGAL STORAGE OF TAX-PAID LIQUOR BY HOLDER OF PLEINARY RETAIL CONSUMPTION AND DISTRIBUTION LICENSES WITH INTENTION TO EVADE FEDERAL FLOOR TAX - FEDERAL TAX SUBSEQUENTLY PAID - LICENSEE ORDERED TO PAY PENALTY FEE IN THE AMOUNT OF \$500.00 TOGETHER WITH COSTS OF SEIZURE.

Case No. 6383

In the Matter of the Seizure on January 26, 1943 of 191 cases of assorted alcoholic beverages at 132 East 33rd Street, in the City of Paterson, County of Passaic and State of New Jersey.

On Hearing
CONCLUSIONS AND ORDER

Harold Simandl, Esq., Attorney for Gold Seal Liquor Company.
Harry Castelbaum, Esq., Appearing for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether 191 cases of assorted alcoholic beverages owned by Gold Seal Liquor Company and seized on January 26, 1943 at 132 East 33rd Street, Paterson, N.J., constitute unlawful property and should be forfeited.

Gold Seal Liquor Company has been a retail liquor licensee since 1934. It holds two licenses: a plenary retail consumption license, and a plenary retail distribution license, for premises designated as 19 Main Street, Paterson. There is a three-story building on the premises with two stores on the first floor and apartments on the upper floors. The two stores are divided by a

partition; in one the licensee conducts a tavern while the other is a package liquor store.

The Gold Seal Liquor Company is a family corporation, the stock being held by Sol Gold, his wife Celia Gold, and his son Benjamin Gold. Sol Gold and Benjamin Gold were employed at the licensed premises and Benjamin Gold appears to have guided its business affairs.

On January 26, 1943, ABC agents discovered 1,147 cases of alcoholic beverages, bearing Federal strip tax stamps, stored by the licensee in the second floor apartment of the building, and 191 cases of alcoholic beverages, likewise bearing Federal strip tax stamps, stored by the licensee in the dwelling of Benjamin Gold located at 132 East 33rd Street, Paterson. The licensee did not have any permit to store the alcoholic beverages in Gold's dwelling and it was not a licensed warehouse. Cf. R.S. 33:1-14, 18.

These beverages, so far as appears, were purchased by the corporate licensee in its regular course of business and were part of its stock of liquors intended for resale in its tavern and liquor store. The licensee began to store alcoholic beverages on the second floor of its licensed premises in December, 1941 and began to store alcoholic beverages at Benjamin Gold's dwelling in November, 1942. The licensee concealed its possession and storage of such alcoholic beverages from the State and Federal authorities. Benjamin Gold and Sol Gold readily admitted that the purpose of such concealment was to evade the Federal "floor" tax imposed thereon on November 1, 1942.

By arrangement between the Department of Alcoholic Beverage Control and the Federal Alcohol Tax Unit, the Federal agents seized the 1,147 cases of alcoholic beverages which were found on the second floor of the licensed premises and ABC agents seized the 191 cases of alcoholic beverages found in Benjamin Gold's dwelling.

The 191 cases of alcoholic beverages were subject to seizure and forfeiture by this Department because their storage in Gold's dwelling was prohibited by the law of this State. A retail licensee must keep his stock of alcoholic beverages either on his licensed premises or in a public warehouse licensed by the Commissioner of Alcoholic Beverage Control to store alcoholic beverages. If the retailer stores such alcoholic beverages elsewhere without first obtaining a permit from such Commissioner, it constitutes a violation of the Alcoholic Beverage Law. See R.S. 33:1-2, 50. See Re Max, Bulletin 24, Item 10; Re Bock, Bulletin 118, Item 5; Re Butera, Bulletin 197, Item 9; and cf. Re United Brewing Company, Bulletin 203, Item 3. Also see Re Miller, Seizure Case No. 6356, Bulletin 544, Item 6; Re Keane, Seizure Case No. 6575; and Re Pellington, Bulletin 628, Item 1. By reason of such unlawful storage the alcoholic beverages, even though tax paid, are none the less illicit, subject to seizure and forfeiture. R.S. 33:1-1(i), (y) and 66.

When the matter came on for hearing, pursuant to R.S. 33:1-66, application was made on behalf of the corporate licensee for the return of the 191 cases of alcoholic beverages. It asserts, that if, in fact, the storage of such alcoholic beverages in Benjamin Gold's residence is unlawful, that it had unwittingly violated the law and, hence, should be permitted to obtain a special permit retroactively validating such unlawful storage.

As a general rule, where a retail licensee stores alcoholic beverages off the licensed premises in ignorance of the law and without any fraudulent intent the violation may be corrected by issuance of a validating permit in lieu of forfeiture of the alcoholic beverages. This action is founded upon the discretionary authority which I have under R.S. 33:1-66(e) to return property subject to forfeiture to a person who has established to my satisfaction that he acted in good faith and unknowingly violated the law.

The licensee claims that the alcoholic beverages were stored in Benjamin Gold's dwelling because there was no room for them in its licensed premises; that, despite the admitted attempt to defraud the Federal government of taxes, its officers were not aware that it was unlawful to store such alcoholic beverages elsewhere than on the licensed premises. No evidence to the contrary has been presented. I shall therefore give the licensee the benefit of the doubt and accept its statement. However a two-fold offense is involved in that not only was the storage unlawful but, much more serious, it involved an evasion of the Federal tax. The available records of the Tax Department of this state fail to indicate that any state liquor taxes were evaded.

I have consistently followed the principle, in cases of this nature, that there may be circumstances under which a person can clear his record of such a Federal offense. Re Keane, supra; Re Zeuli, Seizure Case No. 6885; also, cf. Re Miller, supra.

The corporate licensee and Benjamin Gold and Sol Gold have traveled a long and hard road since they were caught trying to "beat" the taxes due on the concealed stock of alcoholic beverages.

In February 1943 the licensee paid the Federal "floor" tax of \$12,594.07 on its complete stock of alcoholic beverages, including the seized alcoholic beverages.

Thereafter, Gold Seal Liquor Company, Benjamin Gold and Sol Gold were indicted by the Federal Grand Jury. On July 24, 1944 the Gold Seal Liquor Company and Benjamin Gold pleaded guilty to the charge of concealing liquor with the intent to defraud the United States. The charges against Sol Gold were nolle prossed. The corporation was sentenced to pay a fine of \$2,500.00 and Benjamin Gold was sentenced to pay a fine of \$1,500.00. In addition, Benjamin Gold was sentenced to eighteen months in prison, which sentence was suspended and he was placed on probation for four years.

In April 1944 the licensee paid a new additional "floor" tax in the sum of \$9,212.83 upon the seized liquor.

In September 1944 the licensee effected a compromise with the Federal authorities whereby it paid the sum of \$13,986.36 in compromise of its civil liability under the Federal law. It also paid to the Federal authorities the sum of \$300.64 for storage charges of the alcoholic beverages in their possession.

In sum, the Golds (the corporation and individuals) have paid a total of \$40,093.90 in taxes, penalties, and fines for their attempt to evade the Federal taxes on 1,338 cases of liquor. Crime does not pay! Those who violate the law do!

The floor tax payments, and compromise payment, covered the 1,147 cases seized by the Federal authorities and the 191 cases seized by the Department of Alcoholic Beverage Control. When all of these sums were finally paid the Federal authorities returned the 1,147 cases of alcoholic beverages to the corporate licensee and in addition, declared that it had no further claim to the 191 cases of alcoholic beverages in question. This Department had no claim

against the 1,147 cases returned by the Federal authorities because they were stored on licensed premises and, hence, were not subject to seizure or forfeiture under the law of this state.

The corporate licensee, in business for over ten years, has an otherwise clear record. For its misguided attempt to evade the Federal tax, it has paid a heavy financial penalty and the licensee and Benjamin Gold both now have a blot on their records. In addition, disciplinary proceedings were brought by the Department of Alcoholic Beverage Control against the licensee for storage of alcoholic beverages off the licensed premises and for failure to file with the State Tax Commissioner requisite reports disclosing its storage, purchase and sale of alcoholic beverages. By a separate contemporaneous conclusion and order in such disciplinary proceeding, its licenses are being suspended for 20 days.

After careful consideration of all of the above facts I have decided that in the instant case, as in the hereinabove cited cases, I should not disregard the action of the Federal authorities and order the liquor seized by the ABC agents forfeited because of the attempted evasion of the tax.

I shall therefore accept an application by the Gold Seal Liquor Company for a retroactive permit validating the unlawful storage at a fee of \$500.00. In addition, it is to pay the costs paid or incurred in the seizure of the alcoholic beverages by this Department. Upon issuance of this permit and payment of the costs of seizure, the 191 cases of alcoholic beverages will be returned to Gold Seal Liquor Company.

ALFRED E. DRISCOLL,
Commissioner.

Dated: February 8, 1945

7. DISCIPLINARY PROCEEDINGS - FILING FALSE AND MISLEADING TAX REPORTS, IN VIOLATION OF R.S. 54:45-1 AND R.S. 53:1-2 - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary Proceedings against
GOLD SEAL LIQUOR CO.,
19 Main Street,
Paterson, New Jersey,
Holder of Plenary Retail Consumption License C-128 and Plenary Retail Distribution License D-65 for the fiscal year 1942-43, and now holder of Plenary Retail Consumption License C-128 and Plenary Retail Distribution License D-65 for the current (1944-45) fiscal year; both issued by the Board of Alcoholic Beverage Control of the City of Paterson.

CONCLUSIONS

AND

ORDER

Harold Simandl, Esq., Attorney for Defendant-licensee.
Harry Castelbaum, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee has pleaded not guilty to the following charges:

"1. You failed, in violation of R.S. 54:45-1 and R. S. 54:47-3, to file with the State Tax Commissioner requisite reports disclosing the alcoholic beverages stored, purchased, and sold by you during the months of January, 1942 to January, 1943, both inclusive, in that you filed for these months false reports of said storage, purchase, and sales.

"2. During the period between November 1, 1942 and January 26, 1943 you stored alcoholic beverages intended for sale in your licensed premises, in the residence of Benjamin Gold at 132 East 33rd Street, Paterson, which was not licensed to store or warehouse alcoholic beverages, such storage not being within the terms of your Plenary Retail Consumption License or your Plenary Retail Distribution License, and therefore in violation of R.S. 33:1-2."

The facts concerning the seizure on January 26, 1943, at unlicensed premises known as 132 East 33rd Street, Paterson, of 191 cases of assorted alcoholic beverages are set forth in Seizure Case No. 6383, decided herewith.

At the hearing herein, a statement given to ABC investigators on the date of the seizure by Sol Gold, president of defendant corporation, was admitted in evidence. In this statement the president of defendant corporation admits that false inventories of defendant's stock of alcoholic beverages were set forth in monthly reports filed between December 1941 and December 1942 with the State Tax Commissioner of the State of New Jersey. The president also admits that, prior to November 1, 1942, approximately 180 cases, more or less, of alcoholic beverages were removed with his knowledge from the licensed premises to the unlicensed premises at 132 East 33rd Street, Paterson.

R.S. 54:45-1 requires defendant to file with the State Tax Commissioner on or before the 20th day of each month a report, under oath, which shall disclose the amount of alcoholic beverages stored, withdrawn from storage, purchased and sold by the defendant during the preceding month.

R.S. 54:47-3 provides that any person who shall file with the State Tax Commissioner any false or fraudulent report or statement with the intent to defraud the State or evade payment of any tax, penalty or interest, or any part thereof, which shall be due pursuant to the provisions of Title 54, subtitle 8 of the Revised Statutes, shall be guilty of a misdemeanor.

As was said in Re Miller, Bulletin 573, Item 5:

"The purpose of requiring such monthly reports is to afford the State Tax Commissioner true information from which he can determine the amount of liquor taxes which are due to the State. It is no answer to say that the State has not been defrauded of any taxes. The fact remains that the various reports were false and, hence, I find that defendant, for the months mentioned therein, has failed to file reports disclosing the amount of alcoholic beverages stored, withdrawn from storage, purchased and sold by her during the preceding month."

I find the defendant guilty as to charge (1).

I shall suspend defendant's licenses for a period of twenty days because of the finding of guilt as to charge (1).

For the reasons set forth in the seizure case decided herewith, and in Re Keane, Bulletin 618, Item 9, I also find defendant guilty as to charge (2). However, under all the circumstances, I shall not impose any additional penalty because of the finding of guilt as to charge (2).

Accordingly, it is, on this 8th day of February, 1945,

ORDERED that plenary retail consumption license C-128 and plenary retail distribution license D-65, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Gold Seal Liquor Co., for premises 19 Main Street, Paterson, be and the same is hereby suspended for twenty (20) days, commencing at 3 A. M. February 18, 1945, and terminating at 3 A. M. March 10, 1945.

ALFRED E. DRISCOLL,
Commissioner.

8. COURT DECISIONS - NEW JERSEY SUPREME COURT - SHER v. ALFRED E. DRISCOLL, COMMISSIONER - ORDER DISMISSING APPLICATION FOR WRIT OF CERTIORARI - COMMISSIONER SUSTAINED.

JACOB SHER,)	NEW JERSEY SUPREME COURT
Prosecutor,)	
v.)	ON CERTIORARI
BOARD OF COMMISSIONERS, THE)	ORDER DISMISSING
MUNICIPAL BOARD OF ALCOHOLIC)	APPLICATION FOR WRIT
BEVERAGE CONTROL OF THE CITY)	OF CERTIORARI
OF PERTH AMBOY, AND ALFRED E.)	
DRISCOLL, COMMISSIONER OF THE)	
DEPARTMENT OF ALCOHOLIC BEV-)	
ERAGE CONTROL OF THE STATE OF)	
NEW JERSEY,)	
Respondents.)	

This matter having come on for hearing before the Court at the Court House at Elizabeth, on the 3rd day of February, 1945, in the presence of Henry K. Golenbock, Attorney for the Prosecutor; and Thomas L. Hanson, representing the Attorney General of the State of New Jersey, appearing for Alfred E. Driscoll, Commissioner of the State Department of Alcoholic Beverage Control of the State of New Jersey, and the respective counsel having been heard and the arguments presented having been considered by the Court, and the Court having determined the same;

It is on this 7th day of February, 1945, ORDERED that the aforesaid application for a writ of certiorari be denied.

On motion of

THOMAS L. HANSON
Thomas L. Hanson, Attorney,
appearing for Walter D. Van Riper,
Attorney General.

Clarence D. Case
Supreme Court Justice

9. DISCIPLINARY PROCEEDINGS - LICENSE SUSPENDED FOR BALANCE OF ITS TERM WITH PERMISSION GRANTED TO BONA FIDE TRANSFEREE TO PETITION TO LIFT AFTER EXPIRATION OF 20 DAYS' SUSPENSION - BONA FIDE TRANSFER APPROVED BY MUNICIPAL ISSUING AUTHORITY AND 20 DAYS HAVING EXPIRED - APPLICATION TO LIFT SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against)

ANNA M. LANNING, Administratrix, Estate of Charles M. Lanning, Route 25, West State Highway, Burlington (City), New Jersey,)

On Petition

O R D E R

Holder of Plenary Retail Consumption License C-10 issued by the Common Council of the City of Burlington.)

Max Pomerantz, Petitioner, Pro se.

BY THE COMMISSIONER:

On January 12, 1945, I suspended the license of Anna M. Lanning, Administratrix, Estate of Charles M. Lanning, for the balance of its term, effective at 2 A. M. January 19, 1945, after she had pleaded non vult to charges alleging that she had permitted other persons to exercise the rights and privileges of her license. Re Lanning, Bulletin 647, Item 4. In said order it was provided that a transferee of the license might apply to me for the lifting of the suspension; provided, further, however, that, in any event, a twenty-day suspension must be served.

Pursuant to said leave, Max Pomerantz has filed a verified petition wherein it is set forth that the Common Council of the City of Burlington has duly transferred the license subject to the suspension heretofore imposed from Anna M. Lanning, Administratrix, to the petitioner, Max Pomerantz.

The petition further sets forth that petitioner has purchased all the right, title and interest of the above named defendant in and to the business and license, and that he is now the sole owner of the business and license.

It appearing that the suspension has now been in effect for more than twenty days, and it further appearing to my satisfaction, from the facts set forth in the verified petition, that the unlawful situation has been corrected, I shall lift the suspension immediately.

Accordingly, it is, on this 9th day of February, 1945,

ORDERED that the suspension heretofore imposed be lifted, and that plenary retail consumption license C-10, issued to Anna M. Lanning, Administratrix, Estate of Charles M. Lanning, and transferred to Max Pomerantz, be and the same is hereby restored to full force and operation, effective immediately.

ALFRED E. DRISCOLL, Commissioner.

10. LIMITED RETAIL DISTRIBUTION LICENSE - HEREIN OF ITS RESTRICTED PRIVILEGES UNDER R.S. 33:1-12(3b), AND REASON FOR STRICT ENFORCEMENT THEREOF - DISCIPLINARY PROCEEDINGS AND PENALTY FOR DISREGARD OF THE RESTRICTIONS RECOMMENDED.

February 9, 1945

Board of Commissioners
North Bergen, N. J.

Gentlemen:

I have before me the result in your disciplinary proceedings against Anna Albrecht, 3701 Bergen Turnpike, charged with selling a lesser quantity of beer than is permitted under her limited retail distribution license.

I note that, on the licensee's plea of guilty, you suspended her license for a net period of 10 days.

Under the Alcoholic Beverage Law, holders of the type of license in question are given very restricted privileges. They are entitled to sell only unchilled malt alcoholic beverages, by the bottle or other original container, for off-premises consumption, and never in a quantity less than 72 fluid ounces. They serve only a limited function, and pay a much smaller fee than the usual retail licensee. As I understand the facts in the present case, the licensee sold an agent of this Department three 12-ounce bottles of beer on the occasion in question.

Please accept my sincere thanks for your institution and conduct of these proceedings. This licensee and all other holders of her limited type of license may be well advised that, in disregarding the restrictions of their license, they not only constitute highly unfair competition to regular retail licensees who pay a much higher fee but, in addition, become more trouble than they are worth to the public.

Very truly yours,

ALFRED E. DRISCOLL,
Commissioner.

11. CLUB LICENSES - HOURS OF SALE - MUNICIPAL HOURS OF SALE REGULATIONS APPLY TO CLUB LICENSES UNLESS THE REGULATIONS EXPRESSLY PROVIDE OTHERWISE (RULE 6, STATE REGULATIONS NO. 7) - HEREIN OF UNDESIRABILITY OF PERMITTING CLUB LICENSEES TO SELL DURING HOURS WHEN SALE BY PLENARY RETAIL CONSUMPTION LICENSEES IS PROHIBITED.

February 14, 1945

Edward E. Stover, Esq.
Attorney, Borough of Washington
Washington, N. J.

Dear Mr. Stover:

I have your letter of February 7th relating to the opening and closing hours for club licenses in the Borough, and asking whether or not "this type of license must, as a matter of course, maintain the same hours as prescribed by ordinance for all licenses."

There is nothing in the Alcoholic Beverage Law or State Regulations which requires that all classes of licenses shall be treated alike. See to this effect the enclosed copy of Re Beackley, Bulletin 254, Item 9, which however points out the undesirability of permitting club licenses to sell alcoholic beverages during hours when such sales are prohibited as to plenary retail consumption licensees.

Rule 6 of State Regulations No. 7 provides that club licenses shall be subject to the same hours of sale regulations "as are prescribed in that municipality in respect to plenary retail consumption licenses, unless such municipality enacts that all club licenses issued in such municipality shall not be so subject."

Washington Borough's hours of sale regulation (as last amended by an ordinance adopted April 17, 1944), makes no distinction between club licenses and plenary retail consumption licenses. The hours during which sale, service, delivery, and consumption on the premises are prohibited in the Borough apply, therefore, to club licenses the same as to other retail licenses.

It is to be noted that the ordinance provides that during the hours when sales are prohibited, the entire licensed premises, excepting the part or parts thereof operated as a bona fide hotel or restaurant, shall be closed. If one or more of the Borough's three club licenses have on the licensed premises a bona fide restaurant, the restaurant might, under the exception in the ordinance, be permitted to remain open after the "stop" hour but only for restaurant purposes other than the sale or service of alcoholic beverages.

Perhaps the Borough's Common Council may wish to except club licenses generally from the closing of premises requirement--to permit club licensed premises to remain open during hours of prohibited sale for the clubs' general purposes other than the sale of alcoholic beverages. In that even, the second paragraph of Section 3 of the ordinance as amended April 17, 1944, should be further amended accordingly. If such an amendment is prepared, please send us a copy prior to introduction.

Very truly yours,

Alfred C. Driscoll
Commissioner.