

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

BULLETIN 797

MARCH 16, 1948.

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

BULLETIN 797

MARCH 16, 1948.

1. APPELLATE DECISIONS - PIERCE v. HAMILTON TOWNSHIP.(ATLANTIC COUNTY).

DISCIPLINARY PROCEEDINGS - PERMITTING LICENSED PREMISES TO BE
CONDUCTED AS A NUISANCE - PERMITTING LICENSED PREMISES TO BE USED
FOR PROSTITUTION - LICENSE REVOKED.

AUGUST J. PIERCE,)

Appellant,)

-vs-)

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF HAMILTON (Atlantic)
County),)

Respondent)

ON APPEAL

-----)
In the Matter of Disciplinary)
Proceedings against)

CONCLUSIONS AND ORDER

AUGUST J. PIERCE)

T/a J. E. M. CAFE)

N/S Harding Highway)

Hamilton Township)

P. O. Mays Landing, N. J.,)

Holder of Plenary Retail Consump-)

tion License C-23, for the 1946-47)

fiscal year, issued by the Town-)

ship Committee of the Township)

of Hamilton (Atlantic County).)
-----)

John Rauffenbart, Esq., by Martin Bloom, Esq., Attorney for)
Appellant.)

John E. Iszard, Esq., Attorney for Respondent.)

BY THE COMMISSIONER:

This matter is before me in two aspects -- first, on appeal from the action of respondent in denying appellant's application for renewal of his license for the current fiscal year and, second, on disciplinary charges against appellant-defendant and his lately expired license. The matter will be disposed of in one set of Conclusions.

On the appeal, the stated reasons for the denial are:

(a) For violation of the State Alcoholic Beverage Control Act;
and

(b) For criminal charge of maintaining a disorderly house.

At the time of the denial both disciplinary proceedings instituted by respondent and criminal proceedings against the appellant Pierce were pending.

It appears that the local issuing authority did not try the disciplinary action because a principal witness was temporarily unavailable. At the hearing of the appeal herein, the local issuing authority, by letter and upon application of its attorney, asked that

the Commissioner take jurisdiction of, try and decide the still pending disciplinary action. Attorney for defendant (appellant herein) made the same request.

The Commissioner has concurrent jurisdiction to institute, hear and determine disciplinary actions against a license issued by a local issuing authority. R. S. 33:1-31.

In this case, the facts upon which the charges in the disciplinary proceedings were preferred were discovered by the New Jersey State Police. Subsequently, agents of the State Department of Alcoholic Beverage Control secured additional evidence and, in accordance with the then current policy, the matter was referred to the local issuing authority for action. To eliminate the necessity of bringing new charges, and in consideration of the joint application by all parties herein, I consented to transfer the pending disciplinary proceedings and to hear and determine said disciplinary proceedings in conjunction with the pending appeal.

At the hearing held herein, appellant-defendant pleaded non vult to the charges set forth in the disciplinary proceedings, as follows:

- (1) You allowed, permitted and suffered lewdness and immoral activities in and upon your licensed premises on November 20, 21, 22, 1946 and allowed, permitted and suffered the licensed premises to be conducted in such a manner as to become a nuisance, in violation of Rule 5 of State Regulations No. 20; and
- (2) You allowed, permitted and suffered the licensed premises and the licensed business to be used in furtherance and aid of and in connection with illegal activity, on said dates, in violation of Rule 4 of State Regulations No. 20.

The undisputed evidence discloses that one Anna --- was employed by the licensee to work as "housekeeper" on his licensed premises. After several days of such employment it was agreed between Anna and the defendant that she would engage in prostitution to "help business", and that she subsequently engaged in this immoral and illegal practice for two or three days as indicated in the charges, with the full cooperation of the licensee or his bartender, or both. The bedroom adjoining the bar, and part of the licensed premises, was used for the illegal purpose.

It is impossible to make any finding herein other than defendant is guilty as charged. The plea of non vult was accepted and is equivalent to a plea of guilty for the purposes of the disciplinary action. Cf. Kravis v. Hock, 136 N. J. L. 161.

The nature of the charges, involving as they do the use of the licensed premises for immoral purposes, well warrants a revocation of the license. This is particularly true when, as here, the immorality consisted of providing both the place and the prostitute. Cf. Levy v. Newark, Bulletin 628, Item 6.

The license held by appellant has expired and, because of the action of the local issuing authority in denying a renewal, he presently has no license. This fact, in itself, does not prevent a revocation. State Regulations No. 16; Re Club Araby, Bulletin 631, Item 10.

Under all the facts herein, anything less than revocation would be a mockery. Cf. Re King, Bulletin 725, Item 9; Re Kaiman, Bulletin 791, Item 4; Re Flax, Bulletin 791, Item 5; Levy v. Newark, Bulletin 628, Item 6.

I shall revoke the license issued for the 1946-47 fiscal year.

In view of the order entered in the disciplinary proceedings herein decided, and considering that such revocation renders the appellant ineligible to hold or receive a liquor license in this state for two years (R. S. 33:1-31) after the date of said revocation, the appeal from denial of renewal will be dismissed.

Accordingly, it is, on this 27th day of February, 1948,

ORDERED that Plenary Retail Consumption License C-23, for the fiscal year 1946-47, issued by the Township Committee of Hamilton Township (Atlantic County) to August J. Pierce, for premises on N/S Harding Highway, Hamilton Township, be and the same is hereby revoked, effective immediately; and it is further

ORDERED that the appeal herein from denial of renewal of the license be and the same is hereby dismissed.

ERWIN B. HOCK
Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

PARADISE WINE & LIQUORS CORP.
67½ Main Street
Hackensack, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution License D-13 issued by the City Council of the City of Hackensack.

Major & Carlsen, Esqs., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to a charge alleging the sale of alcoholic beverages at retail for a price below the minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

On February 28, 1948, an investigator of the State Department of Alcoholic Beverage Control purchased at defendant's premises one 4/5 quart bottle of Rogers' Apple Brandy for the price of \$2.45. The minimum retail price of said item, as established in Bulletin 785, effective December 2, 1947, is \$2.49.

Since this is defendant's first violation, I shall impose the minimum ten-day penalty. Five days will be remitted because of the plea, leaving a net suspension of five days.

Accordingly, it is, on this 4th day of March, 1948,

ORDERED that Plenary Retail Distribution License D-13, issued by the City Council of the City of Hackensack to Paradise Wine & Liquors Corp., for premises 67½ Main Street, Hackensack, be and the same is hereby suspended for five (5) days, commencing at 9:00 a.m. March 8, 1948, and terminating at 9:00 a.m. March 13, 1948.

ERWIN B. HOCK
Commissioner.

3. EGG NOG - EASTER DISPENSATION - SERVICE "ESKIMO PIE" FASHION PROHIBITED.

March 3, 1948

Thomas J. Sweeney, Inspector
Department of Revenue and Finance
Atlantic City, N. J.

My dear Mr. Sweeney:

Traditionally, each year during the Easter season, the Department has permitted consumption licensees to serve egg nog for a limited period of time. I am glad to note that no abuse has developed from this privilege. Hence, the same privilege will be permitted this year beginning Thursday, March 25th and ending Monday, March 29th, at midnight, on the understanding that this privilege will be used reasonably and with moderation.

You also state that a tavernkeeper has inquired whether he may, as a novelty, serve the concoction in edible chocolate containers holding about four ounces of egg nog. What newfangled idea is this! Is the tavernkeeper's egg nog so unpalatable that it must be served sugar-coated? Is it no longer to be the cup but now the "candy that cheers"?

In any event, the above novelty is not permissible. Passing over other possible objections, I may point out for the licensee's benefit that Rule 11 of State Regulations No. 20 prohibits licensees from having so-called liquored candy on the licensed premises. The novelty in question, while perhaps larger in size than the ordinary liquored candy, nonetheless falls within the same ban.

The above privilege to serve egg nog will have to be restricted to the traditional method of service.

Very truly yours,
ERWIN B. HOCK
Commissioner.

4. ADVERTISING - HEREIN OF FEDERAL RULING CONCERNING MANUFACTURERS OR WHOLESALERS ADVERTISING IN PUBLICATIONS CONTROLLED OR SPONSORED BY GROUPS OR ASSOCIATIONS OF RETAILERS.

February 25, 1948

Erwin B. Hock, Commissioner
Department of Alcoholic Beverage Control
Newark 2, N. J.

Dear Mr. Hock:

Reference is made to your letter of February 20, 1948, requesting copy of the Bureau's opinion, reaffirming a prior ruling, relative to payments by manufacturers, importers, or wholesalers of alcoholic beverages for advertising in publications controlled or sponsored by groups or associations of retail liquor dealers. No mimeograph release has been prepared covering the subject in question although the opinion of this office on the matter has been expressed in a number of individual letters.

Section 5(b)(4) of the Federal Alcohol Administration Act makes it unlawful, under the conditions stated, for any producer, importer

or wholesaler of alcoholic beverages to induce any retailer to purchase his products to the complete or partial exclusion of other competitive products, by paying or crediting the retailer for any advertising, display, or distribution service, directly or indirectly. Section 5(b)(3) places similar restrictions upon the giving or furnishing of services or other things of value to the retailer.

The former Federal Alcohol Administration took the position that these provisions of the law operated to preclude the producing, importing and wholesaling branches of the industry from advertising in souvenir programs or other publications controlled or sponsored by groups or associations of retailers, and expressed its views on this subject to the entire industry in a release dated July 31, 1937 (FA-114). After the Federal Alcohol Administration was abolished and its functions transferred to the Alcohol Tax Unit, some question arose as to whether payments in this category were sufficiently direct to constitute inducements within the meaning of the Act, and for some years no action was taken to enforce the former agency's interpretation, although no official release presenting a revised opinion was ever issued. A question recently presented in connection with a proposed retail association publication brought the matter before the Bureau again and involved the necessity of a decision on my part as to whether payments for advertisements in this category are proper under this law.

I am inclined to reaffirm the position taken by the former Federal Alcohol Administration and to construe payments for advertisements in publications controlled or sponsored by groups or associations of retailers as coming under the coverage of the Act. While the payments, of course, are not made directly to individual retailers, they are made to an organization composed of such retailers, and result in direct benefits to the individual members. If these benefits have the effect of inducing the retailers to favor the firms doing the advertising, it seems to me that a violation of the Act would occur, since the law covers the making of such payments or the furnishing of such things of value to retailers, even though the payment or furnishing is indirect.

Very truly yours,
Carroll E. Mealey,
Deputy Commissioner.

5. DISCIPLINARY PROCEEDINGS - UNLABELED BEER TAP - LICENSE SUSPENDED FOR 3 DAYS, LESS 1 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

TILLIE BADÝNA)
T/a CHESTNUT CAFE)
828-30 Chestnut Street)
Camden, N. J.,)

CONCLUSIONS AND ORDER

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

Charles L. Rudd, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleads non vult to the charge that, on February 4, 1948, there was an unlabeled beer tap in her tavern, in violation of Rule 1 of State Regulations No. 22.

An ABC agent, on routine inspection of the defendant's licensed premises on the day in question, found that beer was being drawn from a barrel marked "Chester", through a spigot which did not bear the name of the beer.

Defendant claimed that she intended to correct this condition as soon as the supplier of the beer provided her with the proper apparatus.

Regardless of the good intentions on the part of the defendant, she is responsible for the violation.

Since this is defendant's first violation, her license will be suspended for three days. Re Langford, Bulletin 569, Item 2. In accordance with the Department's policy of remissions on non vult pleas, one day will be remitted in this case, leaving a net suspension of two days.

Accordingly, it is, on this 4th day of March, 1948,

ORDERED that Plenary Retail Consumption License C-102, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Tillie Badyna, t/a Chestnut Cafe, for premises 828-30 Chestnut Street, Camden, be and the same is hereby suspended for a period of two (2) days, commencing at 2:00 a.m. March 15, 1948, and terminating at 2:00 a.m. March 17, 1948.

ERWIN B. HOCK
Commissioner.

6. AUTOMATIC SUSPENSION - SELLING ALCOHOLIC BEVERAGES TO MINORS - LICENSE PREVIOUSLY SUSPENDED FOR 10 DAYS BY LOCAL ISSUING AUTHORITY - APPLICATION TO LIFT GRANTED.

In the Matter of a Petition by)
JESSIE LLOYD)
76 West Jersey Street)
Elizabeth, N. J.,)
Holder of Plenary Retail Consump-)
tion License C-146, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Elizabeth.)

ON PETITION
O R D E R

Hueston & Frank, Esqs., Attorneys for Petitioner.

BY THE COMMISSIONER:

It appears from a petition filed herein that on March 8, 1948, Jessie Lloyd was fined the sum of \$100.00 in the Union County Court of Quarter Sessions, after she had pleaded non vult to charges of selling alcoholic beverages to minors, and that the fine has been paid. On March 8, 1948, an agent of the Department of Alcoholic Beverage Control picked up the license held by petitioner and no business has been conducted under the license since that time.

It further appears from the records of the Department of Alcoholic Beverage Control that the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth suspended the license held by petitioner for a period of fifteen days, less five days for the plea, after she had pleaded non vult in a disciplinary proceeding to charges alleging that she had sold alcoholic beverages to two minors in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20. The suspension was in effect from 2:00 a.m. July 9, 1947 to 2:00 a.m. July 19, 1947.

The indictment in the criminal proceedings and the charges in the disciplinary proceedings were based upon the same facts. The conviction in the criminal proceeding has resulted in the automatic suspension of petitioner's license for the balance of its term. R. S. 33:1-31.1. The petition herein prays that the automatic suspension of the license may be lifted.

Under the circumstances of this case, the penalty heretofore imposed by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth appears to be adequate. Hence, the relief sought herein will be granted.

Accordingly, it is, on this 9th day of March, 1948,

ORDERED that the automatic suspension of License C-146, held by Jessie Lloyd for premises at 76 West Jersey Street, Elizabeth, be and the same is hereby lifted, and said license is hereby restored to full force and operation, effective immediately.

ERWIN B. HOCK
Commissioner.

7. DISCIPLINARY PROCEEDINGS - DISTRIBUTION LICENSEE PERMITTING CONSUMPTION OF ALCOHOLIC BEVERAGES ON LICENSED PREMISES - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against BENJAMIN GOLDMAN 256 Madison Avenue Irvington 11, N. J., Holder of Plenary Retail Distribution License D-9, issued by the Board of Commissioners of the Town of Irvington.

CONCLUSIONS AND ORDER

Benjamin Goldman, Defendant-licensee, Pro Se. Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to charges that (1) he sold alcoholic beverages for consumption on his licensed premises, contrary to the provisions and privileges of his license, and in violation of R. S. 33:1-2; (2) he permitted alcoholic beverages sold by him to be consumed on his licensed premises, in violation of Rule 14 of State Regulations No. 20; and (3) he permitted containers of alcoholic beverages sold by him to be opened on his licensed premises, in violation of Rule 14 of State Regulations No. 20.

On February 5, 1948, at about 12:20 p.m., ABC agents entered defendant's licensed premises and observed a man, later identified as Richard White, standing near the soda fountain holding an open 12-ounce bottle of beer in his hand. The ABC agents made known their identity to the defendant. A search of the rear room of the licensed premises disclosed a cardboard box containing several hundred beer bottle caps located on the floor beneath a bottle opener which was attached to an ice box.

Defendant admitted that at the time in question, as well as on prior occasions, Richard White helped himself to a bottle of beer and drank it on the licensed premises. Richard White corroborated the defendant's statement. Defendant contends, however, that the beer bottle caps found in the rear room had been removed from empty bottles returned by customers. However, the cardboard box containing the beer bottle caps, located under the bottle opener, creates a grave doubt as to the bona fides of the defendant's contention.

A plenary retail distribution license authorizes only the sale of alcoholic beverages for consumption off the licensed premises, and only in the original packages. R. S. 33:1-12(3)a, (3)b. In most communities a plenary retail distribution licensee pays less for his license privileges than does a plenary retail consumption licensee.

Defendant has no previous adjudicated record. The seriousness of the instant violations, however, warrants the imposition of a severe penalty. Cf. Re Strohmenger, Bulletin 737, Item 8, wherein the violation was more serious because it appeared that the licensee was conducting a "speakeasy". Under the circumstances, I shall suspend defendant's license for a period of forty-five days, less five days' remission for the plea entered herein, or a net suspension of forty days.

Accordingly, it is, on this 9th day of March, 1948,

ORDERED that Plenary Retail Distribution License D-9, issued by the Board of Commissioners of the Town of Irvington to Benjamin Goldman, 256 Madison Avenue, Irvington, be and the same is hereby suspended for a period of forty (40) days, commencing at 9:00 a.m. March 15, 1948, and terminating at 9:00 a.m. April 24, 1948.

ERWIN B. HOCK
Commissioner.

8. STATE REGULATIONS - TEMPORARY SUSPENSION OF RULE 5 OF REGULATIONS NO. 35 REQUIRING QUARTERLY REPORTS FROM SOLICITORS.

March 9, 1948.

TO MANUFACTURERS AND WHOLESALERS:

Rule 5 of Regulations No. 35 requires from holders of solicitors' permits, submission of quarterly sworn statements on Form 3110 reporting all moneys received from licensed manufacturers and wholesalers and all moneys paid to licensed retailers.

The rule has served a necessary and useful purpose. Its effectiveness in curtailing certain undesirable trade practices has been amply demonstrated. However, the information contained on Report Forms 3110 is a duplication of that recorded by licensed manufacturers and wholesalers on Form 3100 under Rule 4 of Regulations No. 35. It is anticipated that the desired result can be obtained by continuing the requirement for submission of reports by licensed manufacturers and wholesalers on Form 3100 and suspending, at least for an experimental period, the requirement for submission of reports by solicitors.

It is, therefore, my ruling, effective immediately, that the effect and operation of Rule 5 of Regulations No. 35 shall be suspended until further notice. It is emphasized that the rule has not been abrogated and that it will again become effective and operative in the event and as soon as any abuses become apparent.

Manufacturers and wholesalers are placed on notice that on or before April 10, 1948, the date for filing the next quarterly report of solicitors' earnings, they should submit only the Report Form 3100. They are hereby requested to notify each of their solicitors of the temporary suspension of the operation and effect of Rule 5 of Regulations No. 35 as hereinabove set forth.

ERWIN B. HOCK
Commissioner.

9. DISCIPLINARY PROCEEDINGS - INDECENT DANCE BY ENTERTAINER - HOSTESS - UNQUALIFIED EMPLOYEES - SALE DURING PROHIBITED HOURS - PERMITTING PREMISES TO BE CONDUCTED AS A NUISANCE - LICENSE SUSPENDED FOR BALANCE OF TERM.

In the Matter of Disciplinary Proceedings against)

JOSEPH HAZY)
Route 31, South Somerville)
Hillsborough Township)
P.O. Somerville R.D. 1, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-1, for the 1946-47 fiscal year, issued by the Township Committee of the Township of Hillsborough, and extended pending appeal.)

Milton A. Weiss, Esq. and Samuel Chiaravalli, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The following charges were preferred against defendant:

"1. On or about January 25, 26, February 2, 8 and 9, 1947, you allowed, permitted and suffered lewdness and immoral activities in and upon your licensed premises, in that female entertainers performed in a lewd, indecent and immoral manner, in violation of Rule 5 of State Regulations No. 20.

"2. On all the above mentioned occasions, you allowed, permitted and suffered Catherine Brown, a female employed on your licensed premises, to accept beverages at the expense of and as a gift from customers and patrons, in violation of Rule 22 of State Regulations No. 20.

"3. On or about February 8 and 9, 1947, you allowed, permitted and suffered Bertie Gaines, a female employed on your licensed premises, to accept beverages at the expense of and as a gift from customers and patrons, in violation of Rule 22 of State Regulations No. 20.

"4. On all the above mentioned occasions, and continuously throughout and prior thereto, you knowingly employed on your licensed premises Joseph Hazy and Margaret Hazy (minors under the age of fifteen years), Catherine Brown and Bertie Gaines (non-residents of the State of New Jersey), and Toney Marvai (not a citizen of the United States or a national of a country with which the United States has an existing trade treaty); in violation of R. S. 33:1-26 and State Regulations No. 13.

"5. On Sunday morning, January 26, 1947, at about 2:10 a.m. and again at about 2:20 a.m., and on Sunday morning, February 9, 1947, at about 2:10 a.m., you sold and allowed to be sold, served and delivered alcoholic beverages, directly and indirectly, upon the licensed premises, in violation of Section 6 of an Ordinance adopted by the Township Committee of Hillsborough Township on September 12, 1939, which prohibits any such activity after 2:00 a.m.

"6. On all the above mentioned occasions, and continuously throughout, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered all the foregoing violations to occur, and conducted the licensed place of business in a manner offensive to common decency and public morals, in violation of Rule 5 of State Regulations No. 20."

Defendant pleaded not guilty to Charges 1, 5 and 6; non vult to Charges 2, 3, and so much of 4 as relates to Catherine Brown and Bertie Gaines; and not guilty as to the balance of Charge 4.

As to Charge 1: Testimony of ABC agents established that at approximately 1:30 a.m. on January 26, Catherine Brown, an entertainer at the licensed premises, attired in a costume consisting of a scanty "bra" and scanty pair of pants with fringe, was introduced by the master of ceremonies who announced that she would do "her famous South Sea Isle dance". During the dance she engaged in suggestive bodily motions. In the course of her performance she went to one of the tables surrounding the dance-floor and, by manipulation of her body and thighs, removed some money which had been placed by a customer on the corner of the table. Coming to the investigators' table she said, "Put some money on the table", whereupon the investigators placed on the corner of the table a 25¢ piece which she removed in the same manner. On February 2 and 8 Catherine Brown performed similarly, including the picking up of coins from tables; and, on the evening of February 8 and the early morning of February 9, Bertie Gaines, then acting as mistress of ceremonies, told several "off color" stories accompanied by suggestive movements of her body. It further appears that Bertie Gaines repeated the performance of picking up objects from a table.

As to Charge 4: On January 25, 1947, ABC agents observed a young boy, subsequently identified as the licensee's son, aged 12, serving sandwiches and hot dogs to customers at the bar. They also observed a young girl, subsequently identified as the licensee's daughter, aged 14, acting as check-room attendant handling hats and coats.

As to Charge 5: Notwithstanding an applicable municipal ordinance prohibiting sale, service and delivery of alcoholic beverages after 2:00 a.m., three rounds of alcoholic drinks were served between 2:00 a.m. and 2:20 a.m. to a group consisting of two investigators and Catherine Brown on January 26, 1947. Again on February 9, 1947, at 2:12 a.m., a round of alcoholic drinks was served to a party consisting of two investigators, Catherine Brown and Bertie Gaines.

In defense, and with particular reference to the charge of permitting lewd and indecent entertainment and its affiliate charge of conducting the licensed business as a nuisance (Charges 1 and 6), defendant produced several witnesses who testified that they were present on the licensed premises at the times in question but that they did not observe any violation or see anything wrong with the dance performed by Catherine Brown. However, their testimony is weakened, in the first place, by the fact that it is purely negative and, in the second place, their evasiveness when specific aspects of the dance were called to their attention substantially impairs their credibility. In addition, Bertie Gaines, who was mistress of ceremonies on the occasions in question, was not produced as a witness for the defendant; and Beatrice Salter, a waitress, although testifying that she had never seen Catherine Brown perform that portion of the act wherein she picked up coins from customers' tables, had previously given a sworn statement admitting that she had observed Catherine Brown so perform. The defendant himself testified merely that he did not see the entire show nor did he observe Catherine Brown pick up coins from the various tables as testified by the agents.

The charges of permitting lewd and immoral activity and conducting the licensed business as a nuisance were substantiated by positive testimony of the ABC agents and were not disproved by the testimony of the defense witnesses who testified with respect thereto. Hence, I find the licensee guilty as to the first and sixth charges. In addition, the non vult pleas and the testimony herein establish the licensee's guilt as to Charges 2, 3, 5 and 4 except as to so much of Charge 4 as relates to employment of Toney Marvai, since as to such employment the evidence is insufficient to establish that the licensee had knowledge of Marvai's disqualification.

Under all of the circumstances, a suspension of license for the balance of its term is indicated. Cf. Re Mazziotti, Bulletin 301, Item 9, involving similar lewd and indecent entertainment. The license held by defendant when these proceedings were instituted has expired. Hence, any renewal license granted to defendant for the year 1947-48 pursuant to order today entered in the appeal of Hazy v. Hillsborough (decided herewith) will be so suspended. See Rule 3 of State Regulations No. 16.

Accordingly, it is, on this 10th day of March, 1948,

ORDERED that the renewal license for the 1947-48 licensing year, when granted by the Township Committee of the Township of Hillsborough to Joseph Hazy for premises on Route 31, South Somerville, Hillsborough Township, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1948, effective at 2:00 a.m. March 15, 1948.

ERWIN B. HOCK
Commissioner.

10. APPELLATE DECISIONS - HAZY v. HILLSBOROUGH.

JOSEPH HAZY,)
Appellant,)
-vs-)
TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF HILLSBOROUGH,)
Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

Milton A. Weiss, Esq., Attorney for Appellant.
Clarkson A. Cranmer, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of appellant's application for renewal of his 1946-47 plenary retail consumption license for premises Route 31, South Somerville, Hillsborough Township.

Respondent denied the application on June 27, 1947 because disciplinary proceedings (decided herewith) were then pending and undetermined.

A licensee's record of previous adjudicated violations may be considered in connection with an application for renewal of license and in a proper case justifies denial of renewal. Zicherman v. Driscoll, 138 N.J.L. 586. However, the mere fact that disciplinary proceedings are pending and undetermined is not, in and of itself, sufficient cause for denial of renewal. Re Reichenstein, Bulletin 325, Item 11.

The action of respondent in denying renewal will be reversed and the license applied for ordered to be granted subject, however, to the penalty imposed in disciplinary proceedings against the licensee, decided herewith.

Accordingly, it is, on this 10th day of March, 1948,

ORDERED that the action of respondent in denying renewal of the license be and the same is hereby reversed and respondent is directed to issue the license applied for, subject to suspension of the said license for the balance of its term, viz., until midnight, June 30, 1948; and it is further

ORDERED that the Order heretofore entered herein on June 30, 1947, extending the term of the license held by appellant for the fiscal year 1946-47, be and the same is hereby vacated, effective at 2:00 a.m. March 15, 1948.

ERWIN B. HOCK
Commissioner.

11. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MICHAEL C. SKRIPKO)
T/a MICHANNE'S COCKTAIL LOUNGE)
S/S State Highway 36)
West Keansburg, Raritan Township)
P.O. 231 Seeley Ave.)
Keansburg, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-12, issued by the Township Committee of Raritan Township.)
-----)

Michael C. Skripko, Defendant-licensee, Pro Se.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that, on February 19, 1948, he possessed illicit alcoholic beverages at his licensed premises, to wit, two 4/5 quart bottles labeled "Schenley Reserve Blended Whiskey", both of which were not genuine as labeled, in violation of R. S. 33:1-50.

Defendant has no previous adjudicated record. I shall suspend his license for a minimum period of fifteen days, less five days for the plea entered herein, or a net suspension of ten days. Cf. Re Matarazzo, Bulletin 770, Item 4.

Accordingly, it is, on this 11th day of March, 1948,

ORDERED that Plenary Retail Consumption License C-12, issued by the Township Committee of Raritan Township to Michael C. Skripko, t/a Michanne's Cocktail Lounge, for premises S/S State Highway 36, West Keansburg, Raritan Township, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. March 16, 1948, and terminating at 2:00 a.m. March 26, 1948.

ERWIN B. HOCK
Commissioner.

12. AUTOMATIC SUSPENSION - SELLING ALCOHOLIC BEVERAGES TO MINORS - LICENSE PREVIOUSLY SUSPENDED FOR 20 DAYS BY LOCAL ISSUING AUTHORITY - APPLICATION TO LIFT GRANTED.

In the Matter of a Petition by)

STEPHEN HENLE)
T/a HOTEL HENLE)
219 E. Lincoln Avenue)
Wildwood, N. J.,)

ON PETITION
O R D E R

Holder of Plenary Retail Consump-)
tion License C-4 issued by the)
Board of Commissioners of the)
City of Wildwood.)

Nathan C. Staller, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

It appears that on February 4, 1948, in the Cape May Court of Quarter Sessions, Stephen Henle was sentenced to six months in the County Jail, which sentence was suspended, and fined the sum of \$500.00, after he had pleaded guilty to a charge of selling alcoholic beverages to a minor. On March 8, 1948, an agent of the Department of Alcoholic Beverage Control picked up the license held by petitioner, and no business has been conducted under the license since that time.

It appears from the records of the Department of Alcoholic Beverage Control that the Board of Commissioners of the City of Wildwood suspended the license held by petitioner for a period of twenty-five days, less five days for the plea, after he had pleaded non vult in a disciplinary proceeding to charges alleging that he had sold alcoholic beverages to minors, in violation of Rule 1 of State Regulations No. 20. The disciplinary proceedings were instituted on the initiative of the local issuing authority. The suspension was in effect from December 1, 1947 to December 21, 1947.

The indictment in the criminal proceeding and the charges in the disciplinary proceeding were based upon the same facts. The conviction in the criminal proceeding has resulted in the automatic suspension of petitioner's license for the balance of its term. R.S. 33:1-31.1. The petition herein prays that the automatic suspension of the license may be lifted.

Under the circumstances of this case, the period of suspension heretofore imposed by the Board of Commissioners of the City of Wildwood appears to be adequate. Hence, the relief sought herein will be granted.

Accordingly, it is, on this 11th day of March, 1948,

ORDERED that the automatic suspension of License C-4, held by Stephen Henle, t/a Hotel Henle, for premises 219 East Lincoln Avenue, Wildwood, be and the same is hereby lifted, and said license is hereby restored to full force and operation, effective immediately.

ERWIN B. HOCK
Commissioner.

13. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT ALCOHOLIC BEVERAGE BROUGHT INTO STATE BY PASSENGER IN MOTOR VEHICLE ORDERED FORFEITED - MOTOR VEHICLE RETURNED TO OWNER UNAWARE OF PRESENCE OF ILLICIT ALCOHOLIC BEVERAGE IN CAR.

In the Matter of the Seizure on)	Case No. 7204
December 10, 1947, of a Buick		
Sedan and a half gallon jar of)	
corn whiskey in the vicinity of Ocean		ON HEARING
and Ege Avenues, in the City of Jersey)	CONCLUSIONS AND ORDER
City, County of Hudson and State of		
New Jersey.)	

 Raymond H. Cohn, Esq., Attorney for James Bailey.
 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 a Buick Sedan and a half gallon jar of corn whiskey, seized on December 10, 1947 in the vicinity of Ocean and Ege Avenues, Jersey City, N. J., constitute unlawful property and should be forfeited.

It appears that on the above date Jersey City police officers stopped the Buick Sedan, which bore Virginia license plates, to investigate the activities of the occupants of the car, and discovered the half gallon unlabeled jar of corn whiskey in a suitcase in the trunk compartment of the car. The State Department of Alcoholic Beverage Control was notified of these events and the car and whiskey were turned over to such Department.

The jar of whiskey did not bear any tax stamps or other indicia of tax payment, and did not bear any label. Hence, the whiskey is prima facie illicit. R. S. 33:1-88. Moreover, James Bailey, the owner of the car, admitted that it is bootleg liquor. Such illicit whiskey, and the car in which such whiskey was being transported, are therefore subject to forfeiture. R. S. 33:1-1(i) and (y), R. S. 33:1-2, R. S. 33:1-66.

When the matter came on for hearing pursuant to R. S. 33:1-66, James Bailey appeared and sought return of the car. No one has appeared to seek return of the bootleg whiskey.

Bailey claims that he acted in good faith in that he had no knowledge, or reason to suspect, that the illicit whiskey was in his car. If this actually is the fact, I am authorized to return the car to him. R. S. 33:1-66(f).

When the car was seized by the Jersey City police officers, James Bailey, Horace Bailey, Edward Green (who was driving the car), and two other persons, all of whom were passengers in the car, disclaimed ownership of the bootleg whiskey or any knowledge of its presence in the car.

Evidence was presented at the seizure hearing that James Bailey and his brother, Horace Bailey, agreed to transport Green to Jersey City to pick up some of his belongings. The Baileys regarded it as a pleasure trip, inasmuch as they had never previously visited this vicinity. The preponderance of the evidence is that Green, who has been convicted of illegal liquor activities in Virginia, was the owner of the bootleg whiskey.

It further appears that James Bailey and Horace Bailey reside with their mother, who is the owner of a farm in Virginia, and help her operate such farm. Both James Bailey and Horace Bailey seem to be industrious, law-abiding and of a truthful character. They repeated their assertion that they did not place the suitcase containing the

whiskey in the car, and did not have any knowledge that it was there, giving a detailed account of their activities in the course of their trip to this state. Another passenger in the car, an acquaintance whom they transported as an accommodation, corroborates their version of what occurred.

From the evidence, I am inclined to accept James Bailey's story, and therefore find that he acted in good faith, and was unaware that the illicit whiskey was in his car. The Buick Sedan will therefore be returned to him upon payment of the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 22nd day of March, 1948, James Bailey pays the costs of seizure and storage of the Buick Sedan, it will be returned to him; and it is further

DETERMINED and ORDERED that the half gallon jar of corn whiskey and the suitcase constitute unlawful property, and that the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, 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.

Dated: March 11, 1948.

ERWIN B. HOCK
Commissioner.

14. STATE LICENSES - NEW APPLICATIONS FILED.

Distilled Liquors Import Co., Inc.
Monmouth County Route #1 and Vanderburg Rd., Eatontown, R.F.D., N. J.
Application for Plenary Wholesale License filed March 2, 1948.

William Wild
Rear of 48 Union Ave., Irvington, N. J.
Application for State Beverage Distributor's License filed
March 2, 1948.

L. J. Barry Beverages, Inc.
45 East Bigelow St., Newark, N. J.
Application for State Beverage Distributor's License filed
March 5, 1948.

Alex. Belinowicz
Foot of Centre St., Newark, N. J. - SS "Queenie"
Application for Plenary Retail Transit License filed March 5, 1948.

Sergio De Gennaro
920 Washington St., Hoboken, N. J.
Application for Wine Wholesale License filed March 8, 1948.

Rex Beer Distributors Inc.
41-43 Center St., Jersey City, N. J.
Application filed March 12, 1948 for transfer of State Beverage
Distributor's License SBD-27 from Kenneth S. Coombs, N.E. Cor. of
Walnut & New York Aves., North Wildwood, N. J.

Guttenberg Wine Co.
55-61 - 68th St., Guttenberg, N. J.
Application for Wine Wholesale License filed March 12, 1948.