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

BULLETIN 421 SEPTEMBER 3, 1940.

1. DISCIPLINARY PROCEEDINGS - EMPLOYING BROTHER DISQUALIFIED FROM SUCH EMPLOYMENT BY REASON OF CONVICTION OF CRIME INVOLVING MORAL TURPITUDE - PERMITTING SUCH BROTHER TO BE ON THE LICENSED PREMISES ALTHOUGH A KNOWN CRIMINAL - ADMISSION OF FACTS AND MITIGATING CIRCUMSTANCES - 2 DAYS' SUSPENSION.

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| In the Matter of Disciplinary Proceedings against<br><br>LOUIS DeROGATIS, JR.,<br>88 Bloomfield Avenue,<br>Newark, N. J.,<br><br>Holder of Plenary Retail Consumption License No. C-1013 (fiscal year 1939-1940), issued by Municipal Board of Alcoholic Beverage Control of the City of Newark. | CONCLUSIONS AND ORDER |

Louis C. Micone, Esq., Attorney for Licensee.
Richard E. Silberman, Esq., Attorney for State Department of Alcoholic Beverage Control.

Charges served on licensee allege that, in violation of R. S. 33:1-26, he knowingly employed Nicholas DeRogatis, who is unqualified to hold a license because convicted of crimes involving moral turpitude, and that, in violation of Rule 4 of State Regulations No. 20, he permitted the same person, who was a known criminal, to be in and upon his licensed premises.

Licensee does not dispute the fact that between July 1937 and March 1940 he employed his brother, Nicholas DeRogatis, as bartender. He does not dispute the fact, shown by fingerprint returns that the bartender was convicted, in November 1930, on charges of impersonating an officer and conspiracy. Licensee admitted in a statement given to the Newark Police that he knew his brother had a criminal record but stated that he employed him "because he is my brother and I figured he'd go straight."

The crime committed in 1930 involved attempted extortion by impersonating an officer and the Court imposed a three-year sentence to State's Prison, which was served. Aside from other convictions shown by the record, this crime clearly involved moral turpitude.

There are mitigating circumstances. Nicholas has worked in the same tavern for the past six years; during the past three years for the present licensee, and previously for another brother who then held a license. So far as the liquor laws are concerned, it does not appear that any evils have resulted from said employment. Licensees, however, cannot disregard the clear provisions of the law and escape punishment. I find the licensee guilty as charged, and, under the circumstances of this case, shall suspend the license for two (2) days.

Subsequent to institution of these proceedings, the above mentioned license has expired and has been renewed by issuance of plenary retail consumption license C-840 for the present fiscal yea

Accordingly, it is, on this 20th day of August, 1940,

ORDERED, that Plenary Retail Consumption License C-840, issued to Louis DeRogatis, Jr. by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of two (2) days, effective August 22, 1940, at 3:00 A.M. (Daylight Saving Time).

E. W. GARRETT,
Acting Commissioner.

2. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES - 5 DAYS ON GUILTY PLEA.

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| In the Matter of Disciplinary Proceedings against<br><br>SPRINGFIELD WINE & LIQUOR CO., INC.,<br>90 Springfield Avenue,<br>Newark, N. J.,<br><br>Holder of Plenary Retail Distribution License D-153, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. | CONCLUSIONS AND ORDER |

Robert R. Hendricks, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Springfield Wine & Liquor Co., Inc., by Samuel Schwartz, Secretary and Treasurer.

The licensee has pleaded guilty to a charge of selling liquor at less than the Fair Trade price at the licensed premises on July 26, 1940, in violation of Rule 6 of State Regulations No. 30.

The usual penalty for this violation is ten days.

By entering the plea the licensee has saved the Department the time and expense of proving its case. The license will, therefore, be suspended for five days instead of ten days.

Accordingly, it is, on this 21st day of August, 1940,

ORDERED, that Plenary Retail Distribution License D-153, heretofore issued to Springfield Wine & Liquor Co., Inc. by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of five (5) days, effective Monday, August 26, 1940, at 3:00 A.M. (Eastern Daylight Time).

E. W. GARRETT,
Acting Commissioner.

3. AGE, RESIDENCE OR CITIZENSHIP PERMIT - TWO OR MORE VIOLATIONS OF THE ALCOHOLIC BEVERAGE LAW - CONCLUSIONS.

August 21, 1940

Re: Case No. 336

This proceeding is to determine whether applicant, an alien, should be granted an ARC permit, under R. S. 33:1-26, to be employed in the kitchen of a licensed tavern.

Investigation by this Department discloses that, in 1934, applicant was convicted, on two separate occasions, of violating the State Alcoholic Beverage Law (sale and possession of illicit alcoholic beverages), and that in 1937 he was again convicted of violating the same Law (possession and illegal transportation of illicit alcoholic beverages).

Under the provisions of R. S. 33:1-25, 26, any individual who has committed two or more violations of the Alcoholic Beverage Law is mandatorily disqualified from being employed by or connected in any business capacity whatsoever with a liquor licensee.

Applicant has been thrice convicted.

It is recommended that the application be denied.

Robert R. Hendricks,
Attorney.

APPROVED:
E. W. GARRETT,
Acting Commissioner.

4. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, pursuant to R.S.33:1-31.2) (as amended by Chapter 350, P.L. 1938

Case No. 100

CONCLUSIONS AND ORDER

Petitioner was convicted in 1934 on separate charges of atrocious assault and battery and conspiring with others to commit an atrocious assault and battery, and was sentenced to imprisonment for eighteen months on each charge, the sentences to run concurrently. After serving some fourteen months in a penitentiary petitioner was discharged on July 11, 1935.

In Case No. 248 (Bulletin 295, Item 12), it was determined that the above mentioned crimes, of which petitioner stands convicted, involved moral turpitude and his application for a solicitor's permit was therein denied.

Five years having elapsed since his discharge from prison on July 11, 1935, petitioner now seeks removal of his statutory disqualification under R. S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938).

Since his release from prison in 1935, petitioner has resided with his wife and child in the same municipality wherein he now lives. From 1935 until 1939 he was steadily employed as a chauffeur. Since 1939 he has been doing odd trucking jobs for a furniture concern and a moving company.

On behalf of the petitioner, three character witnesses - a Police Captain, and two business men - who have known petitioner for six, ten and fourteen years respectively, testified that his reputation is good and that he has been leading an honest and law-abiding life during the past five years.

Petitioner's fingerprint record shows that he has neither been arrested nor convicted of any crime since 1934. Report from the police department of the municipality wherein he resides discloses that there are no pending complaints or investigations against him.

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

It is, therefore, on this 26th day of August, 1940,

ORDERED, that his statutory disqualification because of the convictions described in Case No. 248, supra, be and the same is hereby lifted in accordance with the provisions of R. S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938).

E. W. GARRETT,
Acting Commissioner.

5. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

August 26, 1940

Re: Case No. 337

Applicant requests a determination of whether the two crimes of which he has been convicted bar him from holding a solicitor's permit in this State.

On September 21, 1928 he was arrested on a charge of illegal possession and transportation of alcohol, as a result of which, on his plea of guilty, he was fined $100.00. He testified that, while riding in an automobile owned and operated by a friend, several cans of alcohol were discovered by State Troopers in the rear thereof after it had become involved in an accident; that he had no knowledge that any alcohol was in the rear; that out of sympathy for his friend, who was seriously injured, he pleaded guilty, and that thereupon the indictment against his friend was nolle prossed.

Since no aggravating circumstances appear, this run-of-the-mill Prohibition violation does not involve moral turpitude. Re Case No. 294, Bulletin 351, Item 5.

Although not appearing in his fingerprint returns, applicant disclosed in his questionnaire that, on December 14, 1937, he was found guilty of conversion and placed on probation for one year to make restitution of the sum of $1,000.00. It appears that he borrowed a sum of money from a friend and gave two checks as

evidence thereof. After liquidating a portion of the loan he was unable to pay the balance when due, whereupon he was arrested. After his conviction he satisfied the entire debt and at the hearing exhibited a total release thereof, executed by his creditor.

The crime of converting funds to one's own use may or may not involve moral turpitude. In this case, in view of the facts disclosed at the hearing and substantiated by Departmental investigation, the light sentence imposed, and the complete restitution made, I do not believe that the element of moral turpitude is here involved.

It is, therefore, recommended that applicant be declared not disqualified, despite the two convictions herein referred to, from holding a solicitor's permit in this State.

Samuel B. Helfand,
Attorney.

APPROVED:
E. W. GARRETT,
Acting Commissioner.

6. ILLEGAL CONTRACTS - TIED HOUSES - RULING MODIFIED - AGREEMENTS OF MANUFACTURER OR WHOLESALER WITH A RETAILER GRANTING EXCLUSIVE SELLING RIGHTS ON CERTAIN PRODUCT ARE PERMISSIBLE IF RETAILER REMAINS FREE TO REFUSE TO BUY AND IF EITHER MAY TERMINATE AGREEMENT AT WILL WITHOUT LIABILITY.

August 23, 1940

George Ehret Brewery, Inc.,
Brooklyn, N. Y.

Gentlemen:

- - - - - - (In reply to an inquiry) - - - - -

You ask if it is permissible for retailers, who handle only your beer, to advertise that they carry "George Ehret's Extra Exclusively."

A retailer is not prohibited from selling, of his own volition, one brewery's products exclusively, or from advertising that he does so.

The question, however, involves matters of greater import.

If the retailer sells the products of one manufacturer or wholesaler exclusively, it is possible that the manufacturer or wholesaler, in turn, will protect the retailer by excluding others from the territory - by establishing the retailer as what is known as an "exclusive outlet".

It has heretofore been ruled that agreements between manufacturer or wholesaler, and retailer, whereby the latter is granted exclusive rights to sell a certain product are invalid. Re Greenspan, Bulletin 208, Item 1.

The objection was that it ties the retailer to the manufacturer and thereby gives the manufacturer an interest in the retail business contrary to R. S. 33:1-43.

I think that in many cases that is entirely true. But I do not think it is necessarily always true and therefore consider that, as an inflexible rule, the Greenspan determination is unduly harsh.

The purpose of R. S. 33:1-43 is to prohibit, among other things, any contract or agreement whereby the manufacturer or wholesaler secures or obtains domination and control over the retailer. But so long as the agreement does not destroy or impair the retailer's freedom of choice to buy or not to buy from the wholesaler, or his freedom to buy from other wholesalers, and is terminable at the will of either without liability for such termination, I see no violation of R. S. 33:1-43.

But if it destroys or impairs the retailer's freedom of choice it is bad. See Re Hogan, Bulletin 196, Item 14.

Thus, the mere designation by a manufacturer or wholesaler of a particular retail outlet as exclusive in a certain area, coupled with a promise on the part of the manufacturer or wholesaler not to sell to other retailers in that area, is not objectionable under the law where the purpose is solely to obtain what the manufacturer or wholesaler conceives to be a more desirable outlet or marketing set-up, provided the manufacturer or wholesaler acquires no domination or control over the retailer and the retailer owes no duty other than to pay for merchandise.

The ruling in Re Greenspan is to this extent expressly modified.

In the absence of any such unlawful agreement, a retailer may display in his window a sign reading "George Ehret's Extra Exclusively" and the brewery may furnish such a sign provided it does not cause the aggregate cost or reasonable value of all advertising matter furnished the retailer by the brewery to exceed the allowable $50.00 per year. Regulations No. 21, Rule 1(a).

Very truly yours,
E. W. GARRETT,
Acting Commissioner.

7. ELIGIBILITY - RESIDENCE - FACTS EXAMINED - CONCLUSIONS.

August 24, 1940

Re: Case No. 338

Applicant seeks determination of his eligibility to hold a liquor license in New Jersey, more particularly with reference to whether or not he possesses the five years' residence in New Jersey required by R. S. 33:1-25.

Testimony establishes that applicant, a naturalized citizen of the United States, was born in Russia, arriving in this country in 1910 at the age of fifteen, at which time he settled in New York state, in which he lived continuously until 1934. In December of that year he purchased a business in Newark, New Jersey and lived

in that city until July 1939, at which time he returned to New York City, having purchased a business there in June 1939. Applicant testified that he intended New Jersey to become his legal residence when he came here in 1935. This is corroborated by the fact that he became a registered New Jersey voter and voted in this state each year from 1935 until 1939.

Concerning his return to New York, applicant testified that he did so only because he found it was affecting his health to commute between Newark and New York after the long hours that he put in at his business, and that when he did leave New Jersey it was with the intention of returning. In this he was corroborated by a business acquaintance who testified that while applicant lived in New York he expressed his intention to stay there only for a short time and thence return to New Jersey, and that applicant was continually seeking to purchase a business in New Jersey during the time he lived in New York. The purchaser of applicant's business in Newark testified that applicant stated to him at the time that his absence would be only temporary and also declared his intention to return to New Jersey shortly. Credence is lent to applicant's story by the fact that since returning to New York he has not voted there.

From the foregoing I conclude that applicant has been a resident of New Jersey since December 1934, and that he has not lost his New Jersey residence merely because of his sojourn in New York City. It was held in Lilly v. Way, Bulletin 220, Item 1:

> "The word 'residence' as used in the Control Act, means 'domicile' or the place where a person maintains his permanent home to which, when he is absent, he has the intention of returning. See Re Conover, Bulletin 16, Item 4; Re Orland, Bulletin 143, Item 6. Temporary and even protracted absence from the State will not effect loss of domicile if it be accompanied by the intention presently to return, i.e., the so-called animus revertendi. See Re Osborn, Bulletin 174, Item 16; Re Case 53, Bulletin 175, Item 3; Re Potter, Bulletin 186, Item 3. Notwithstanding such absence, the original domicile, once established, is presumed to continue until a new domicile is acquired."

This case is substantially on all fours with Re Case No. 328, Bulletin 410, Item 11, in which the applicant was determined not to have lost his New Jersey residence despite his living in Easton, Pennsylvania for four years.

It is recommended that applicant be advised that he is eligible to hold a New Jersey liquor license insofar as the requirement of five years' residence in New Jersey is concerned.

Emerson A. Tschupp,
Attorney.

APPROVED:
E. W. GARRETT,
Acting Commissioner.

8. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

August 26, 1940

Re: Case No. 339

Hearing was held to determine whether applicant has been convicted of a crime involving moral turpitude and hence is disqualified under the Alcoholic Beverage Law from holding a liquor license or working for a liquor licensee in New Jersey. See R. S. 33:1-25, 26.

In explanation of such conviction, applicant, an unmarried man, testified that in 1933, when he was about thirty-seven years of age, he was living at his cousin's home; that, on one occasion when his cousin was away, he (applicant) invited a thirty-two year old unmarried woman into the house, who there spent the night with him. Investigation corroborates that such woman was "of loose morals and had a shady reputation."

Whether the crime of fornication involves the element of moral turpitude within the meaning of the Alcoholic Beverage Law depends upon the particular facts in each case. See Re Case No. 66, Bulletin 202, Item 6, which so rules after dealing with the question at great length. I do not believe that such element is present in a case, as here, of an isolated instance of fornication with a grown single woman of loose character. See Re Case No.66, supra; Re Case No. 68, Bulletin 203, Item 13; Re Case No. 219, Bulletin 242, Item 3; Re Rehabilitation Case No. 68, Bulletin 364, Item 3.

In December 1936 and again in January 1937 applicant, then working in a tavern in this State, was found guilty of violating local ordinance by keeping such tavern open beyond the municipal curfew hour and was fined $25.00 and $75.00 respectively. Violating local ordinance is not, however, a crime within the meaning of the Alcoholic Beverage Law. Zicherman v. Newark, Bulletin 227, Item 7; Re Rehabilitation Case No. 46, Bulletin 299, Item 9; Re Case No. 278, Bulletin 397, Item 5.

Investigation shows no other convictions against applicant.

In view of the foregoing, it is recommended that applicant be declared qualified, in so far as his above criminal record is concerned, to hold a liquor license or work for a liquor licensee in this State.

Nathan Davis,
Attorney-in-Chief.

APPROVED:
E. W. GARRETT,
Acting Commissioner.

9. APPELLATE DECISIONS - FELZOT v. PALMYRA.

RUBEN FELZOT, )
Appellant, )
-vs- ) ON APPEAL
CONCLUSIONS
MAYOR AND BOROUGH COUNCIL )
OF THE BOROUGH OF PALMYRA, )
Respondent )
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Worth & Worth, Esqs., by Herbert L. Worth, Esq.,
Attorneys for Appellant.
Albert McCay, Esq., Attorney for Respondent.

This is an appeal from the denial of a plenary retail distribution license to appellant for premises 107 W. Broad Street, Palmyra.

Two plenary retail distribution licenses had been outstanding in the Borough from Repeal to July 1, 1939. Because of the failure of one of these licensees to apply for renewal for the fiscal year beginning July 1, 1939, only one such license has been in existence since that date.

On April 9, 1940 (when only one such license existed), respondent Council adopted an ordinance which provided for a limitation of two distribution licenses. On May 14, 1940, it denied appellant's application for such a license, and thereupon instructed its attorney to prepare an amendatory ordinance to limit plenary retail distribution licenses to one. Such amendatory ordinance was introduced the next day and finally adopted on May 28, 1940.

Respondent's position seems to be that (1) at the time it denied appellant's application it was of the opinion that one distribution license was sufficient for the Borough, despite the limitation of two fixed in the ordinance adopted only the month previous thereto, and (2) in any event, appellant is barred by the subsequently enacted ordinance reducing the number of distribution licenses from two to one.

As to (1): In explanation of the adoption of the original quota of two, the members of the Council testified at the appeal hearing that, at the time of the adoption of the original ordinance providing for a limitation of two distribution licenses, they were primarily interested in the number of consumption licenses then existing in the municipality and gave no thought to the number of distribution licenses. The difficulty with accepting this explanation is that it appears unlikely that the Council, when acting upon the single business at hand of adopting a quota for liquor licenses in the Borough, would have overlooked the simple, clear and concise statement in the ordinance limiting the distribution licenses to two. If the members of the Council were of the sincere opinion at the time that no more than one distribution license should be issued in the municipality, they undoubtedly would have introduced such an ordinance and not one fixing a quota of two. Especially is this so since, at the time of the adoption of the original ordinance, only one distribution license was then in existence in the Borough.

As to (2): Since the amendatory ordinance was enacted subsequent to the denial of appellant's application, it must appear, in order that it may apply retroactively to such prior denial, that such ordinance manifested a bona fide policy theretofore existing against the issuance of any further distribution licenses. Glazer v. Paterson, Bulletin 408, Item 5. In view that the evidence does not disclose the existence of any such bona fide policy, the subsequently enacted ordinance should not, in fairness, be retroactively applied to justify the denial of appellant's application. Glazer v. Paterson, supra.

Moreover, it affirmatively appears that such ordinance is unreasonable as applied to appellant and to the vicinity of his proposed premises. Cf. Widlansky v. Highland Park, Bulletin 209, Item 7; Turner v. Walpack, Bulletin 418, Item 3.

It was stipulated at the hearing that W. Broad Street, where appellant seeks to locate, is the main business thoroughfare of the community. Appellant's premises are right in the heart of this business section. The premises of the present distribution licensee, while located on W. Broad Street, are almost one-half mile away from appellant's premises and in a section not as extensively business as where appellant desires to locate. The evidence discloses that the area surrounding appellant's proposed site is heavily populated and contains a higher type of residences than does the area on the other side of town where the other package store is located. Several residents of the municipality appeared at the hearing and testified that there was a definite need for an additional package store in the vicinity of appellant's premises, not only because the existing distribution license was located one-half mile therefrom, but as well because the latter store was located in a part of the municipality where many of the residents are not inclined to do their shopping because of the "tough" character of that vicinity, the nature of which is more fully described in the case of Peditto v. Palmyra, Bulletin 389, Item 13. Such testimony is convincing that public necessity and convenience require the issuance of an additional distribution license at the premises in question.

The action of respondent is reversed.

Since the license for which application was made was for the year 1939-40, expiring June 30, 1940, respondent is directed to issue a license for the year 1940-41, provided appellant makes proper application therefor and fully complies with all statutory requirements, unless valid objections different in kind from those heretofore raised shall be presented.

E. W. GARRETT,
Acting Commissioner.

Dated: August 27, 1940.

10. DISCIPLINARY PROCEEDINGS - FRONT - LICENSE REVOKED ALTHOUGH IT HAS SINCE EXPIRED AND HAS NOT BEEN RENEWED.

In the Matter of Disciplinary Proceedings against

MARIE RONINGER,
Edinburg, West Windsor Township,
P.O. Trenton, R.D. 2, N. J.,

Holder of Plenary Retail Consumption License C-3 (fiscal year 1939-40), issued by Township Committee of West Windsor Township.

CONCLUSIONS AND ORDER

Abraham Rudensey, Esq., Attorney for Licensee.
Stanton J. MacIntosh, Esq., Attorney for Department of Alcoholic Beverage Control.

Licensee pleaded not guilty to charges of (1) making a false statement in her application for license in that she denied that any individual other than herself was interested in the license, whereas in truth and fact John Mealy did have such interest, and (2) aiding and abetting John Mealy to exercise the rights and privileges of her license.

The evidence discloses that when the investigators of this Department visited the licensed premises for the purpose of ascertaining the true owner of the license, they first contacted the licensee and questioned her about the manner in which she acquired the business. She was unable to give them any information in that regard and referred them to Mealy. After discussing the situation with Mealy, he finally stated, "Well, boys, you got me. I will tell you all about it."

His story was then incorporated in a written statement which he signed and to which the licensee also subscribed her name and certified that the facts therein contained were true. From that statement it appears that in March 1939 Mealy arranged for the purchase of the business from the former licensee, and as part of the purchase price he agreed to assume the outstanding indebtedness, which was represented by the seller as totalling $400.00, whereas actually it amounted to $1100.00. The statement then goes on:

> "I was still afraid that if I got the license in my name some of the creditors might sue me as I did not believe Weeks (the former licensee) had told me everything. So I made arrangements with my friend, Marie Roninger, to take the license in her name so as to protect myself as much as possible. When I did this I did not realize it was a violation of the law."

At the hearing the licensee denied that she was a "front" for Mealy and contended that she had not read the statement prior to signing it. She stated that the business and license belonged solely to her and that she employed Mealy as manager and bartender at a salary of $25.00 per week. However, I am convinced that this alleged employment was merely a subterfuge to enable Mealy to

recoup what he could of the money he had invested in the business. As to her story that she subscribed her name to the statement without reading it, no reason appears why I should disbelieve the testimony of the investigators that they read the statement to her before she signed it.

I find the licensee guilty of both charges.

As to penalty: These proceedings were instituted against plenary retail consumption license C-3, issued to Marie Roninger for the fiscal year 1939-40, expiring June 30, 1940. She has not renewed her license nor has any license been issued for the current period for her former premises, which is now vacant. Even though the license has expired, it will be revoked. This penalty will disqualify the licensee from holding or receiving any liquor license in this State for a period of two years from the date hereof. R. S. 33:1-31.

Accordingly, it is, on this 27th day of August, 1940,

ORDERED, that plenary retail consumption license C-3, issued by the Township Committee of West Windsor Township to Marie Roninger for premises in Edinburg, West Windsor Township, New Jersey, for the fiscal year 1939-40, be and the same is hereby revoked.

E. W. GARRETT,
Acting Commissioner.

11. DISCIPLINARY PROCEEDINGS - SALES OUT OF HOURS - 3 DAYS ON GUILTY PLEA.

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| In the Matter of Disciplinary Proceedings against<br><br>ADOLF LAUFER,<br>80 New Street,<br>Newark, New Jersey,<br><br>Holder of Plenary Retail Consumption License C-323, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. | CONCLUSIONS AND ORDER |

Robert R. Hendricks, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Sidney Simandl, Esq., Attorney for the Defendant-Licensee.

The defendant-licensee has pleaded guilty to a charge of selling alcoholic beverages on his licensed premises during prohibited hours on Sunday, July 21, 1940, in violation of Section 1 of Ordinance No. 3930, adopted by the Board of Commissioners of the City of Newark on December 21, 1938.

The usual penalty for this offense is five days.

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

Accordingly, it is, on this 29th day of August, 1940,

ORDERED, that Plenary Retail Consumption License C-323, heretofore issued to Adolf Laufer by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of three (3) days, effective September 3, 1940, at 3:00 A.M. (Eastern Daylight Time).

E. W. GARRETT,
Acting Commissioner.

12. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, pursuant to R. S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938).

Case No. 113

CONCLUSIONS AND ORDER

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On March 24, 1932 petitioner was convicted of robbery and sentenced to the Rahway Reformatory for an indefinite term. On August 1, 1932, after serving there for about four months, he was released on probation which recently and successfully ended on July 15, 1940.

Petitioner now prays that his disqualification from holding a liquor license or working for a liquor licensee in this State, by reason of his said conviction of robbery (Re Case No. 278, Bulletin 397, Item 5), be removed under R. S. 33:1-31.2 (as amended by P.L. 1938, c. 350), which provides for such removal if the State Commissioner is convinced that petitioner has been leading a law-abiding life for at least five years last past.

Petitioner, after his release from the reformatory in 1932, resumed his residence in the Borough where he had been living at time of his conviction, and has continued to reside there since. Until the present time he has been engaged at various jobs, such as working in a fruit market, driving a truck, acting as a plumber's helper, etc.

At the hearing petitioner produced three character witnesses - a Councilman (in the Borough where petitioner resides) who has known petitioner and his family for sixteen years; a member of the police department of a neighboring town who has known him for five years; and a neighbor who has known him for some twenty years. All three witnesses testified that petitioner has been conducting himself as a law-abiding citizen and that his reputation is good.

Fingerprint returns disclose that petitioner's record since 1932 is clear. The Chief of Police of the Borough where he lives advises that there are no complaints or pending investigations against him. The Assistant Director of the Division of Parole of the Department of Institutions and Agencies states that petitioner "is known to be industrious" and "has made an excellent adjustment on parole."

In view of the foregoing, it satisfactorily appears that petitioner has been leading an honest and law-abiding life since his release in 1932, warranting removal of his disqualification.

Accordingly, it is, on this 30th day of August, 1940,

ORDERED, that his statutory disqualification because of the conviction disclosed herein be and the same is hereby lifted, in accordance with the provisions of R. S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938).

E. W. GARRETT,
Acting Commissioner.

13. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

August 30, 1940

Re: Case No. 340

In his application for solicitor's permit, applicant denied that he had ever been convicted of a crime. His fingerprint record, however, disclosed that on August 2, 1934 he had been arrested, or received into custody in New York, on a charge of non-support. Disposition of the matter was reported as "$400. 6 mos." His record disclosed no other arrest or conviction.

At the hearing applicant testified that in 1934 his wife, from whom he had been separated, had taken him into court for the purpose of forcing him to pay more money for her support and the support of their child; that the court thereupon had ordered him to put up a cash bond in the amount of $400.00 to guarantee payment of his weekly contributions to their support; that he had spent two days in jail before he had been able to raise the necessary money; that with the posting of the bond he had been released; and that he "did not consider it a crime".

Subsequent investigation by this Department discloses that the court which ordered applicant to deposit the bond was the Domestic Relations Court in New York City, and that the reference to "6 mos.", which appears on the fingerprint return, pertains to that part of the Court's order giving applicant the alternative of putting up the bond or being committed to the Work House for six months.

A summary order for support in Domestic Relations Court is not a conviction of a "crime" within the meaning of R. S. 33:1-25. Re Case No. 299, Bulletin 356, Item 7.

Applicant, therefore, did not make a false statement in his application when he stated that he had never been convicted of a crime. It is recommended that applicant be declared eligible to hold a solicitor's permit.

Robert R. Hendricks,
Attorney.

APPROVED:
E. W. GARRETT,
Acting Commissioner.

14. SEIZURES - UNREGISTERED STILL PARTS AND MASH - PROPERTY FORFEITED - PADLOCK DENIED.

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| In the Matter of the Seizure on March 27, 1940 of a still at 583 Boulevard, in the City of Bayonne, County of Hudson and State of New Jersey. | Case 5723<br>ON HEARING<br>CONCLUSIONS AND ORDER |

Aaron A. Melniker, Esq., Attorney for Sara D. Eisenstat.
Harry Castelbaum, Esq., Attorney for the Department of Alcoholic Beverage Control.

The premises known as 583 Boulevard, Bayonne, contain a store on the first floor and apartments in the two upper floors. On March 27, 1940 investigators of this Department seized a number of unregistered still parts in a pantry located on the rear porch of an apartment located on the second floor of said premises; they also seized a quantity of mash in the kitchen and bedroom of the second floor apartment; they arrested Ida Doroshinsky, who was present on the portion of the premises where the still parts and mash were found.

The still parts were not registered under the provisions of R. S. Title 33, Chapter 2, and at the hearing no one appeared to contest the forfeiture. It is determined that all the seized property constitutes unlawful property. R.S.33:2-5.

As to padlocking: Sara Eisenstat, who is the owner of premises known as 583 Boulevard, Bayonne, seeks to avoid padlocking. She is the daughter of Ida Doroshinsky. She states that she and her husband occupy the front rooms of the second floor apartment and that her father and mother occupy the two rear rooms of said apartment; that her father is seventy years of age and an invalid; that her mother is sixty-five years of age and that both of them are dependent upon the daughter and her husband for support and maintenance.

Sara Eisenstat states that she is regularly employed in a law office and for that reason is seldom home; that she was totally unaware of any illegal activities conducted on the portion of the premises occupied by her parents. I have some doubt as to the daughter's complete lack of knowledge of the illegal activities conducted by her mother in the rear rooms of the apartment, but because of the absence of any evidence that alcoholic beverages were manufactured for sale and because of the advanced age and physical condition of Ida Doroshinsky and her husband, I shall not impose a padlock on any portion of the premises.

Accordingly, it is ORDERED that the seized property, more fully described in Schedule "A" annexed hereto, be and the same is hereby 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 Commissioner.

E. W. Garrett

Acting Commissioner.

Dated: September 3, 1940.

SCHEDULE "A"

1 - 25-gallon copper cooker
1 - 15-gallon copper cooker
2 - 5-gallon galvanized coolers and copper coils
1 - 25-pound box of raisins
2 - 25-pound boxes of prunes
2 - 25-gallon barrels of raisin and prune mash
1 - 5-gallon crock of raisin and prune mash
1 - 5-gallon crock of cherry brandy
1 - 3-gallon cooking pot of alcoholic beverages