

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

BULLETIN 506

MAY 4, 1942.

1. DISCIPLINARY PROCEEDINGS - EMPLOYING A MINOR, APPLICANT FOR EMPLOYMENT PERMIT, AND PERMITTING HIM TO SELL ALCOHOLIC BEVERAGES IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 11 - 5 DAYS' SUSPENSION, LESS 2 FOR GUILTY PLEA.

DISCIPLINARY PROCEEDINGS - SALE AND SERVICE BY MINOR APPLICANT FOR PERMIT IN VIOLATION OF R. S. 33:1-26 - 30 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

PETER LUHRS,)
T/a LUHRS' DELICATESSEN,)
6 Queen Anne Road,)
Bogota, N. J.,)

Holder of Plenary Retail Distribution License D-3, issued by the Borough Council of the Borough of Bogota,)

CONCLUSIONS
AND ORDER

-and-

GORDON J. CLADE,)
93 Maple Street,)
Teaneck, N. J.,)

Holder of Employment Permit 7637, issued by the State Commissioner of Alcoholic Beverage Control.)
-----)

G. George Addonizio, Esq., Attorney for Department of Alcoholic Beverage Control.
Peter Luhrs and Gordon J. Clade, Pro Se.

BY THE COMMISSIONER:

The licensee, Peter Luhrs, has pleaded guilty to a charge of employing Gordon J. Clade, a minor, and permitting him to sell and serve alcoholic beverages, in violation of Rule 1 of State Regulations 11. In the affiliate proceedings Clade has pleaded guilty to a charge that, although disqualified as to age, he sold alcoholic beverages, in violation of R. S. 33:1-26. Both cases being interrelated, they will be decided together.

On December 2, 1941 Clade, then about seventeen years of age, was employed on the licensed premises and there sold three cans of beer to investigators of this Department. According to Luhrs, the licensee, Clade was first employed on November 25 and contemporaneously therewith, applied to this Department for an employment permit and was awaiting action thereon; that both of them assumed that Clade could sell alcoholic beverages because he had applied for such permit. Clade, who eventually received his permit on December 11, 1941, gives a similar explanation.

Actually they were both in complete error since Clade, being a minor, cannot legally sell alcoholic beverages under any circumstances; at most, he could seek an employment permit merely to work on licensed premises in a capacity other than selling, serving or dealing with alcoholic beverages. See R. S. 33:1-26.

It is axiomatic that ignorance of the law or regulations presents no defense.

However, since no previous record appears against either licensee or permittee, the minimum penalties of five days and thirty days, respectively, will be imposed. Two days of the licensee's suspension and five days of the permittee's suspension will be remitted because of the guilty pleas. See Re Stein and Stoler, Bulletin 458, Item 3; Re Broodwinner, Bulletin 477, Item 3; Re Hochheiser, Bulletin 500, Item 2.

Accordingly, it is, on this 23rd day of April, 1942,

ORDERED, that Plenary Retail Distribution License D-3, heretofore issued to Peter Luhrs, t/a Luhrs' Delicatessen, for premises 6 Queen Anne Road, Bogota, by the Borough Council of the Borough of Bogota, be and the same is hereby suspended for a period of three (3) days, commencing April 27, 1942, at 2:00 A.M. and concluding April 30, 1942, at 2:00 A.M.; and it is further

ORDERED, that Employment Permit 7637, heretofore issued to Gordon J. Clade by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for a period of twenty-five (25) days, commencing April 27, 1942, at 2:00 A.M. and concluding May 22, 1942, at 2:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

2. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - ADMISSION TO REFILLING FROM HALF-GALLON BOTTLE INTO QUART BOTTLES OF SAME BRAND - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against

STANLEY GRZYBOWSKI,
44 N. Olden Ave.,
Trenton, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-107 issued by the Board of Commissioners of the City of Trenton.

Stanley Grzybowski, Defendant-Licensee, Pro Se.
Abraham Merin, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee has pleaded guilty to charges alleging that (1) on November 3, 1941 he possessed illicit alcoholic beverages in that two 1-quart bottles labeled "Wilson 'That's All' Blended Whiskey, 90 Proof," found on his premises, contained alcoholic beverages which varied from genuine samples in proof and solid content, in violation of R. S. 33:1-50, and (2) without holding a proper license therefor, he refilled the aforesaid bottles, in violation of R. S. 33:1-78.

On November 3, 1941, while making a routine inspection at the licensed premises, two Departmental agents tested twenty-four open bottles, seizing the two bottles in question. In a statement obtained from Helen Meronchuk, niece of the licensee, she admitted that she had poured the contents of a half-gallon of Wilson "That's All" Blended Whiskey 86 Proof into the two 1-quart bottles of Wilson "That's All" Blended Whiskey 90 Proof. She stated that she had done this, without the licensee's knowledge, because "the 1/2 gallon bottles were too large for me to handle."

I am satisfied from a consideration of all of the evidence in this case that the violation was unwitting. Nevertheless, the seized bottles contained illicit beverages because the labels thereon, reading four points higher in proof than the refilled contents, no longer truly described the contents. Re Cech, Bulletin 505, Item 1 (decided subsequent to the hearing in this matter). In the cited case, the facts of which are almost parallel with those of the case at bar, I imposed a ten-day penalty, saying, "Licensees and their agents must learn that they cannot tamper with the contents of open bottles." A similar penalty will be inflicted herein.

Accordingly, it is, on this 24th day of April, 1942,

ORDERED, that Plenary Retail Consumption License C-107, heretofore issued to Stanley Grzybowski by the Board of Commissioners of the City of Trenton for premises 44 N. Olden Avenue, Trenton, be and the same is hereby suspended for ten (10) days, commencing April 29, 1942, at 2:00 A.M. and concluding May 9, 1942, at 2:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

3. ELIGIBILITY - BREAKING, ENTERING, LARCENY AND RECEIVING ARE CRIMES INVOLVING MORAL TURPITUDE - APPLICANT DECLARED INELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

April 24, 1942.

Re: Case No. 424

This proceeding is to determine whether applicant may obtain a liquor license or work for a liquor licensee in New Jersey.

From Repeal until June 30, 1939, applicant actually held a plenary retail consumption license for a tavern in this State. While such a licensee he was, in January 1935, convicted in criminal court for violating the Alcoholic Beverage Law by possessing illicit liquor in the cellar of his tavern and fined \$101.80. For the same offense he appeared before the local issuing authority in disciplinary proceedings against his license, and received a suspended sentence. Thereafter, in May 1939, that issuing authority, in additional disciplinary proceedings, again found applicant guilty of violating the Alcoholic Beverage Law by possessing illicit

liquor at his tavern, and also found him guilty of violating Rules 1 and 3 of State Regulations 22 by having mislabeled beer taps and by advertising liquor not available for sale at the tavern, whereupon his license was suspended for fifteen days.

Since such latter disciplinary proceedings involved a second violation of the Alcoholic Beverage Law, applicant was peremptorily disqualified by that Law from engaging in the liquor industry in New Jersey after the expiration of his then existing 1938-9 license. See Re Passaic, Bulletin 316, Item 1.

On April 30, 1941 the Alcoholic Beverage Law was amended, raising question whether applicant could be viewed as having "another chance." See Re New Legislation, Bulletin 457, Item 8; Bulletin 463, Item 10.

However, it is unnecessary to determine this question since applicant appears to be disqualified on a totally independent ground - viz., conviction of a crime involving moral turpitude. See R. S. 33:1-25, 26.

Thus, in November 1920, applicant, when twenty-nine years of age, pleaded non vult to the charges of breaking, entering, larceny and receiving. Sentenced to imprisonment for an indefinite term, he was released after about a year. It appears that applicant had acted in concert with two other men in breaking into and rifling a tailoring shop at night and stealing goods there.

Breaking, entering, larceny and receiving are crimes which, by their very nature, ordinarily involve moral turpitude. Re Case 304, Bulletin 363, Item 7. Also see Re Case 231, Bulletin 271, Item 10 and cases there cited; Re Case 179, Bulletin 485, Item 8. Nothing appears in the present case to free applicant's conviction of that element. Although he claims that he was actually innocent, he may not here collaterally attack his own confessional plea or the merits of his conviction in the criminal court. See Re Case 173, Bulletin 504, Item 7, and cases there cited.

Hence, applicant is necessarily disqualified by such conviction from engaging in the liquor industry in this State. The fact that, despite such conviction, he nevertheless obtained his above mentioned licenses shows, not that his disqualification in any way disappeared, but merely that such licenses were improvidently issued to him.

Accordingly, it is recommended that applicant be declared disqualified from obtaining a liquor license or working for a liquor licensee in New Jersey.

While it is true that applicant, since more than five years have elapsed from such conviction, may petition this Department for removal of the disqualification (R. S. 33:1-31.2), the question whether such removal may be granted rests in the sound discretion of the State Commissioner. In view of applicant's misconduct while holding a license within the last five years, I can see no possible basis for removal of the disqualification.

Nathan Davis,
Attorney-in-Chief.

APPROVED:

ALFRED E. DRISCOLL,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENT IN LICENSE APPLICATION - AIDING AND ABETTING NON-LICENSEES, DISQUALIFIED BECAUSE OF RESIDENCE, TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - FAILURE TO NOTIFY ISSUING AUTHORITY OF TRANSFER OF MAJORITY OF STOCK - LICENSE REVOKED.

DISCIPLINARY PROCEEDINGS - FAILURE TO DISCLOSE INTEREST IN LICENSED PREMISES IN VIOLATION OF R. S. 33:1-25 - EXERCISING THE RIGHTS AND PRIVILEGES OF THE LICENSE - EMPLOYMENT PERMITS REVOKED.

In the Matter of Disciplinary Proceedings against

SPARK PLUG INN, INC., T/a SPARK PLUG INN, Atlantic City Blvd., State Highway #4, Eagleswood Township, P. O. West Creek, N. J.,

Holder of Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Eagleswood.

In the Matter of Disciplinary Proceedings against

ANNA MARIE VOGT, 15-41 - 124th Street, College Point, New York,

Holder of Employment Permit No. 5544, issued by the State Commissioner of Alcoholic Beverage Control.

In the Matter of Disciplinary Proceedings against

JULIUS C. VOGT, 15-41 - 124th Street, College Point, New York,

Holder of Employment permit No. 4066, issued by the State Commissioner of Alcoholic Beverage Control.

Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee was charged with (1) falsifying its license application by misrepresenting the true interest of Anna Marie Vogt and Julius C. Vogt in the license and the business to be conducted thereunder, (2) aiding and abetting said individuals to

exercise the rights and privileges of its license, and (3) failing to notify the issuing authority of the transfer of the majority of its stock from Josephine Higgins to Katherine Potter.

The permittees were severally charged with exercising the rights and privileges of the license issued to Spark Plug Inn, Inc.

At the hearing, no one appeared on behalf of the licensee or either of the permittees to contest the proceedings.

The proof shows that, in June 1941, the Vogts purchased the licensed premises from Josephine Higgins. When the Vogts learned that they could not hold a license in their names because of non-residence, they procured the formation of Spark Plug Inn, Inc. By agreement between the parties, ninety-five per cent of the stock of said corporation was placed in the name of Josephine Higgins, who is apparently qualified, and the remaining five per cent of the stock was placed in the names of Anna Marie Vogt and Julius C. Vogt. In a statement given to investigators, Josephine Higgins admitted that she never had any interest in the stock standing in her name and that all profits from the business belonged solely to the Vogts. After the investigation was begun, the stock then standing in the name of Josephine Higgins was transferred on the books of the corporation to Katherine Potter. The issuing authority was not notified of the transfer, as required by R.S.33:1-34. Subsequently, in a statement given to investigators, Katherine Potter admitted that she held this stock in her name only as a favor for Anna Marie Vogt. It is clear that, since July 2, 1941, the corporation has been a mere "front" for Anna Marie Vogt and Julius C. Vogt, who are the true owners of the business. I find the licensee guilty as charged. In a case of this kind the proper penalty is revocation of the license. Re Sparky's Cafe, Inc., Bulletin 411, Item 6.

It follows that the permittees are also guilty as charged. I shall revoke their permits.

Since the license and permits are to be revoked, it is unnecessary to consider the rule to show cause issued herein why the license issued to Spark Plug Inn, Inc. should not be cancelled because improvidently issued.

Accordingly, it is, on this 25th day of April, 1942,

ORDERED, that License C-4, heretofore issued by the Township Committee of the Township of Eagleswood to Spark Plug Inn, Inc., t/a Spark Plug Inn, for premises on Atlantic City Boulevard, State Highway #4, be and the same is hereby revoked, effective immediately; and it is further

ORDERED, that Employment Permit No. 5544, issued to Anna Marie Vogt, and Employment Permit No. 4066, issued to Julius C. Vogt, by the State Commissioner of Alcoholic Beverage Control, be and the same are hereby revoked, effective immediately.

ALFRED E. DRISCOLL,
Commissioner.

5. MORAL TURPITUDE - ATROCIOUS ASSAULT AND BATTERY INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - FAILURE TO PRESENT CONVINCING TESTIMONY - APPARENT SUPPRESSION OF FACTS - APPLICATION DENIED.

In the Matter of an Application to remove Disqualification because of a Conviction, pursuant to the Provisions of R. S. 33:1-31.2.

CONCLUSIONS AND ORDER

Case No. 184

BY THE COMMISSIONER:

In 1920 petitioner, then about thirty-five years of age, was convicted of possessing illicit liquor and fined \$100.00. In 1925 he was convicted of atrocious assault and battery, sentenced to State prison for a term of one to seven years and paroled after ten months. In 1927 he was arrested on suspicion of robbery, the outcome of such case, however, being uncertain. In 1933 he was arrested for assault and battery, but released when the complaint was dismissed.

It is clear that the said conviction in 1925 for atrocious assault and battery -- a case in which petitioner badly slashed a colored girl on the face with a knife, requiring some twenty-six stitches -- involves moral turpitude and hence disqualifies petitioner from obtaining a liquor license or working in any capacity for a liquor licensee in New Jersey. See R. S. 33:1-25, 26. Petitioner was informed of such disqualification by letter from this Department dated September 14, 1940.

However, since his record is clear of any conviction for more than five years, petitioner applies, under R. S. 33:1-31.2, for a removal of this disqualification.

On reading the transcript of the hearing on such petition, I note that petitioner, when questioned upon the pertinent issue of his employment for the last few years, gave clearly evasive and scarcely credible answers. Apparently he gave such irresponsible testimony in an effort to cover up the possible fact that he worked at licensed premises even after being informed of his disqualification.

Although the Hearer reports that petitioner speaks broken English, I do not believe that the defects in his testimony stem from this fact. The petitioner's frame of mind at the hearing is perhaps most aptly illustrated when, on being questioned about the atrocious assault and battery case, he claimed that all he had inflicted upon the severely cut girl was "a little scratch"!

I have repeatedly ruled that petitioners who do not make full, frank and truthful disclosure of all material facts are simply not entitled to relief in these cases. See Re Case 166, Bulletin 481, Item 3, and cases there cited; Re Case 188, Bulletin 491, Item 9; Re Case 180, Bulletin 504, Item 5; Re Case 173, Bulletin 504, Item 7.

Hence, without further consideration of the merits in this case, the present petition is hereby denied.

ALFRED E. DRISCOLL, Commissioner.

Dated: April 25, 1942.

6. DISQUALIFICATION - APPLICATION TO LIFT - RECONSIDERATION AFTER LAPSE OF THREE MONTHS - GOOD CONDUCT FOR FIVE YEARS LAST PAST AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

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

CONCLUSIONS
AND ORDER

Case No. 165.
-----)

BY THE COMMISSIONER:

Petitioner has requested that I reconsider my order entered on January 14, 1942, refusing to lift his disqualification. Re Case No. 165, Bulletin 490, Item 11.

When entering that order, I was in doubt about granting relief to the petitioner. I resolved such doubt against him partly because he had an extensive criminal record, although for the most part they were minor offenses and his only conviction in the last nine years was in 1937 for driving a car without a license; and partly because he appeared capable of earning sufficient to support his family in fields other than the alcoholic beverage industry.

After my previous decision in this matter, petitioner tried to get employment in other industries, but having vision in only one eye, was turned down because of compensation and insurance regulations. Finally, he went back to his former position as a helper on a furniture moving van. His present earnings are about \$15.00 a week and his work is even more burdensome than in the past, because he is required to go all over the country with the van, thus being away from home for long periods of time.

Petitioner, in urging reconsideration, points out that he has an opportunity to earn \$30.00 a week as a helper on a truck for a licensed state beverage distributor. Obviously, if he can accept this employment, he will considerably improve his economic situation and be enabled to provide more amply for his wife and two children.

The Treasurer of the concern which has offered employment to the petitioner has interceded in his behalf and states that because the President of the company has known petitioner for many years, has a personal interest in his welfare, and knows that he will be a steady worker, they are willing to employ him and to assume full responsibility for his future conduct.

Ordinarily, I am loathe to reconsider my refusals to lift disqualification unless a substantial period of time has elapsed from entry of the order. Otherwise, in every adverse decision, I would be faced immediately with a stream of petitions for reconsideration.

However, in the instant case, since I was originally in doubt and was swayed, in part, by petitioner's apparent ability to earn a satisfactory livelihood in other fields, I feel that the petitioner should, in fairness, be heard upon his claim that actually he cannot secure such a livelihood.

After re-examining the whole record and noting that petitioner's only instance of trouble in the last nine years is his conviction in 1937 for driving without a license, and that his partial

blindness has seemingly made it difficult for him to obtain work where he may adequately provide for his family and be with them, I feel that petitioner is entitled to the relief he seeks.

However, I shall expect that the petitioner's behavior will be wholly exemplary and will justify the confidence which I and his prospective employer are reposing in him.

Accordingly, it is, on this 28th day of April, 1942,

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

ALFRED E. DRISCOLL,
Commissioner.

7. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING THE INTEREST OF ANOTHER - AIDING AND ABETTING A NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - FRANK ADMISSION - SITUATION CORRECTED - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against

OASIS TAVERN OF ASBURY PARK, INC., CONCLUSIONS
917 First Avenue, AND ORDER
Asbury Park, N. J.,

Holder of Plenary Retail Consumption License C-57, issued by the City Council of the City of Asbury Park.

Vincent P. Keuper, Esq., Attorney for Defendant-Licensee.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee has pleaded guilty to charges alleging that:

"1. In his application for license dated October 22, 1941, filed with the City Council of the City of Asbury Park, upon which Plenary Retail Consumption License C-57 for the year 1941-42 was transferred to Paul Beutell, your predecessor in interest from whom said license was transferred to you, Paul Beutell falsely stated 'No' in answer to Question 28 therein, which asks: 'Has any individual....other than the applicant any interest directly or indirectly in the license applied for or in the business to be conducted under said license?', whereas in truth and fact Anton John Lovrovich had such interest in that he was an equal partner in the licensed business of said Paul Beutell; said false statement being in violation of R. S. 33:1-25.

"2. From on or about October 31, 1941 and until January 8, 1942, Paul Beutell, your predecessor in interest, from whom Plenary Retail Consumption License C-57 was transferred to you, knowingly aided and abetted Anton John Lovrovich, a non-licensee, to exercise the rights and privileges of his license contrary to R. S. 33:1-26, in violation of R. S. 33:1-52."

On October 22, 1941, Paul Beutell filed with the City Council of the City of Asbury Park an application to transfer License C-57 from one Ruth Poole to himself. In said application he stated "No" in answer to Question 28. That answer was untrue, because Anton John Lovrovich and Paul Beutell had previously entered into an agreement whereby they agreed to conduct this licensed business as equal partners. They reduced the partnership agreement to writing after the license had been transferred to Beutell and they were sharing equally the net profits of the business at the time investigation was instituted in the latter part of November 1941.

Defendant-licensee was incorporated on December 12, 1941. Anton John Lovrovich holds fifty per cent of the issued stock of said corporation, and Paul Beutell and his wife hold the remaining fifty per cent of the issued stock of said corporation. From the evidence it does not appear that any other individual has an interest in said stock. On January 8, 1942 the license was duly transferred from Paul Beutell to defendant-corporation.

It appears from the investigation made herein that both of the former partners were and are fully qualified to hold a license. Apparently the only reason why the interest of Lovrovich was not disclosed in October 1941 was because he was then engaged in other business and desired to conceal from his employer the fact that he was interested in this license.

I am satisfied that the unlawful situation has been corrected. In view of this fact and the frank admission of guilt by defendant-licensee, I shall impose the usual ten-day penalty. Re Pousenc, Bulletin 492, Item 3.

Accordingly, it is, on this 29th day of April, 1942,

ORDERED, that License C-57, transferred to Oasis Tavern of Asbury Park, Inc., by the City Council of the City of Asbury Park, for premises 917 First Avenue, Asbury Park, be and the same is hereby suspended for a period of ten (10) days, commencing May 4, 1942, at 5:00 A. M. and terminating May 14, 1942, at 5:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN COLORING AND ACIDS - LICENSEE ASSUMES THE RISK IF ILLICIT LIQUOR IS FOUND ON THE PREMISES - PREVIOUS RECORD - 15 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

JOSEPH AGOSTINI,)
T/a AGOSTINI HOTEL,)
624-626 Pacific Ave.,)
Atlantic City, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-147 issued by the Board of Commissioners of the City of Atlantic City.)
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Leon Leonard, Esq., Attorney for Defendant-Licensee.
G. George Addonizio, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were served upon the licensee alleging that (1) on September 20, 1941 he possessed illicit alcoholic beverages in that two one-quart bottles labeled "Calvert Special Blended Whiskey", found on his premises, contained alcoholic beverages which varied from a genuine sample in proof and acid content, in violation of R. S. 33:1-50; and (2) without holding a proper license therefor, he refilled the aforesaid bottles, in violation of R. S. 33:1-78.

On September 20, 1941 a Federal agent tested 28 open bottles at defendant's premises and seized the two bottles referred to in the charges. The proof establishes, however, that one of these bottles was genuine as labeled and was seized only for comparative purposes. Under the circumstances, the decision herein will be limited to the one bottle concerning which there is no dispute of the facts testified to by the Federal chemist.

These facts are that, upon analysis, the chemist found the bottle in question to contain 60 grams per 100 liters of acids, and that the coloring was all genuine or natural, whereas an authentic sample of Calvert Special Blended Whiskey does not contain more than 30 grams per 100 liters of acids and the coloring is preponderantly artificial.

Although pleading not guilty, licensee does not dispute these findings of the chemist. He denies, however, that either he or anyone in his family tampered with the bottle and offers, as his sole explanation, the possibility that the bottle may have been refilled by a bartender whom he discharged shortly after the Federal agent's visit to his premises. Despite such personal innocence, however, the licensee, as "master of his house", must be held strictly responsible for any "refills" found in his stock of liquor. Re Moritko, Bulletin 490, Item 4; Re Leininger, Bulletin 493, Item 1.

Since the circumstances surrounding the offense do not appear to be aggravated, I would, if this were the licensee's first offense, suspend the license for ten days. However, this licensee has a previous record. On October 19, 1940 he suffered a five-day suspension when he pleaded guilty to having sold liquor at less than the established Fair Trade price, in violation of Rule 6 of State Regulations No. 30. In view thereof, I shall impose a penalty of 15 days for the instant violation.

Accordingly, it is, on this 29th day of April, 1942,

ORDERED, that Plenary Retail Consumption License C-147, heretofore issued to Joseph Agostini, t/a Agostini Hotel, by the Board of Commissioners of the City of Atlantic City for premises 624-626 Pacific Avenue, Atlantic City, be and the same is hereby suspended for a period of fifteen (15) days, commencing May 4, 1942, at 12:01 A.M., and concluding May 18, 1942, at midnight.

ALFRED E. DRISCOLL,
Commissioner.

9. COMBINATION SALES - RULE 19 OF STATE REGULATIONS NO. 20 PROHIBITS
"COMBINATION SALES" AT A SINGLE AGGREGATE PRICE.

April 29, 1942

Garrett & Co., Inc.,
Brooklyn, N. Y.

Gentlemen:

During the course of a recent inspection of a retail licensed premises in New Jersey, investigators of this Department found displayed for sale, at a single aggregate price, a package of alcoholic beverages distributed by you, containing one two-fifths pint of Virginia Dare Light Wine, one two-fifths pint of Virginia Dare White Wine, one two-fifths pint of Garrett's Blackberry Wine and one two-fifths pint of Garrett's American Sauterne Wine.

Rule 19 of State Regulations No. 20 prohibits retail licensees from selling or offering for sale alcoholic beverages for consumption off the licensed premises except at a specified price per bottle or per case. The Rule, as interpreted by this Department, forbids sales in combination, at a single aggregate price, of different types or brands of alcoholic beverages. Re Harris, Bulletin 220, Item 7; Re Berner, Bulletin 279, Item 10.

Since the above described package contained four bottles of different types of wine, the sale thereof by retail licensees is prohibited. You must, therefore, cause to be picked up all such packages now in the hands of New Jersey retailers and cease forthwith to distribute the packages for sale at retail in this state.

Very truly yours,
ALFRED E. DRISCOLL,
Commissioner.

10. APPELLATE DECISIONS - CALABRESE v. NEWARK.

WILLIAM V. CALABRESE,)
)
 Appellant,)
)
 -vs-)
)
 MUNICIPAL BOARD OF ALCOHOLIC)
 BEVERAGE CONTROL OF THE CITY)
 OF NEWARK,)
)
 Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

Samuel D. Bozza Esq., Attorney for Appellant.
Charles S. Gansler, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from respondent's refusal to grant appellant a person to person transfer of Louis Esposito's tavern (i.e., plenary retail consumption) license at 498 Broadway, Newark.

In justification for the denial, respondent contends that appellant is seeking the Esposito license, not on his own behalf, but merely as a "front" for his brother, Patsy Calabrese.

Until recently, the suspected Patsy Calabrese was the licensee for a tavern at 299 Morris Avenue in the City. However, on July 3, 1941, respondent refused to renew Patsy's license for the current fiscal year (1941-42), claiming that his misconduct of that tavern stamped him as unfit. Patsy appealed to the Commissioner and obtained an ad interim extension of his 1940-41 license pending the disposition of the appeal. On August 5, 1941, while such appeal was still pending, the Department of Alcoholic Beverage Control brought disciplinary proceedings against Patsy on the basis of violations at his tavern. Thereafter, on August 17, he pleaded guilty in police court to further violations at the tavern. On August 22, the Department having concluded its disciplinary case against Patsy, the Commissioner revoked his 1940-41 license outright; and simultaneously dismissed the appeal. See Re Calabrese, Bulletin 475, Item 1; Calabrese v. Newark, Bulletin 475, Item 2.

In the interim, on August 19, 1941, after Patsy's plea of guilt in the police court virtually concluded his career as a licensee, his brother, the present appellant, filed the application in question. Appellant was at that time an investigator or clerk in a law office. The testimony discloses that on the average his earnings are not more than \$1,000.00 a year. Seemingly he has little real financial worth and is without any actual experience in the tavern business (other than his claim of having occasionally tended bar on Sundays at his brother's tavern).

Appellant claims that he is honestly making the application on his own behalf and that he had been shopping around for a tavern for some time. He testifies, and is corroborated by Esposito, that he first approached Esposito more than a year ago but was unable to reach satisfactory terms; that more recently Esposito reopened the negotiations and that these negotiations were eventually reduced to a written contract for sale of the tavern to the appellant for \$4,000.00. This contract, which was admitted in evidence, discloses

that \$500.00 has been paid on account, that \$1,000.00 is to be paid on the transfer of the license and the taking over of the business, and that the remaining \$2,500.00 is to be paid within two years thereafter.

Appellant further states that he made the down payment from savings which he had accumulated over a period of years and which were kept in cash by his sister at a safe at their home; that his sister is going to lend him additional funds with which to make the \$1,000.00 payment; and that the remainder of the purchase price he anticipates paying out of the proceeds of the business.

Clearly, the fact that appellant, a law clerk or investigator of little present financial worth, filed his application coincidental with the forced withdrawal of his brother Patsy from the liquor business, creates a ready suspicion that appellant may actually be a "front" for Patsy. Appellant's story of how he is financing himself, although nowhere contradicted, scarcely presents a strong case to rebut this suspicion.

However, full fairness requires that it be equally pointed out that there is no direct evidence of any kind and, in fact, no more than the above suspicion, to sustain the claim of "front"; that no question is raised as to appellant's personal character or fitness; and that the tavern in question is actually several miles away from the place where Patsy used to operate.

I am thus faced, on one hand, with a plausible suspicion and no more, and, on the other hand, with the fair-minded rule that Patsy's sins should not be visited upon appellant merely because they are brothers.

In such a state of the case, there is one objective fact which lends a fair measure of independent support to appellant's claim and hence helps to cut the Gordian knot of doubt in his favor. Patsy, by revocation of his license, was specifically disqualified, not only from holding a liquor license, but also from being employed in any capacity whatsoever at any liquor place in New Jersey for a period of two years. See R. S. 33:1-26, 31. There would seem to be little point in Patsy's seeking to take over and operate the tavern in question under the guise of appellant, or anyone else, if Patsy is actually and wholly barred from working there. See Re Boreth, Bulletin 452, Item 5.

Hence, although the issue is close, I am, after long deliberation in this case, accepting appellant's sworn word that his application is bona fide and hence will allow him his day in the liquor business.

However, lest there be any lingering possibility of a "front", I shall direct that the license be transferred to appellant on the express condition that Patsy may not even be permitted on the premises. Violation of such condition will be cause for immediate revocation of the license. Cf. Zicherman v. Newark, Bulletin 227, Item 7; Propeller Cafe, Inc. v. Newark, Bulletin 485, Item 1.

Accordingly, it is, on this 29th day of April, 1942,

ORDERED, that the action of respondent in refusing to transfer to appellant the plenary retail consumption license of Louis Esposito for 498 Broadway, Newark, be and the same is hereby reversed, and respondent is directed to execute forthwith the transfer applied for subject to the following express condition to be inserted on the license:

"This transfer from Louis Esposito to William V. Calabrese is subject to the condition that Patsy Calabrese shall not be permitted on the licensed premises at any time for any reason whatsoever."

ALFRED E. DRISCOLL,
Commissioner.

11. FAIR TRADE - NOTICE OF NEXT PUBLICATION - NEW ITEMS AND CHANGES IN OLD ITEMS MUST BE FILED WITH DEPARTMENT NOT LATER THAN THURSDAY, MAY 7, 1942.

NEW FEDERAL MAXIMUM PRICE REGULATIONS WARRANT NEW PUBLICATION OF MINIMUM RESALE PRICES EFFECTIVE MAY 18, 1942.

TO MANUFACTURERS AND WHOLESALERS ENGAGED IN THE SALE OF ALCOHOLIC BEVERAGES OTHER THAN MALT ALCOHOLIC BEVERAGES:

IMPORTANT NOTICE

May 1, 1942

In order that you may be afforded an opportunity to adjust the minimum resale prices of your products to conform with the requirements of the new Federal maximum price regulations, promulgated April 28th and effective May 18th, it is my decision that the next official publication of minimum resale prices pursuant to the fair trade rules (Regulations No. 30) shall become effective on the same date, namely, May 18, 1942.

Further, it is my decision that this publication will combine all of the prices into one complete booklet superseding the October 1941 publication and the five separate succeeding supplements now in force. The reason for the decision is to avoid any possible confusion among retail licensees.

In submitting price lists to this Department for the complete publication, bear in mind the Federal regulations which establish a ceiling at top prices prevailing in March 1942. Therefore, prices on items appearing in publications prior to and including March 1942, in accordance with the Federal O.P.A. Regulations, may not be increased in the proposed publication of May 18, 1942. There is nothing to prohibit products being listed below the prices now on file. If prices on your products have been increased in the supplement of April 24, 1942, prices on those products in the new listing may not exceed the March prices.

New items and changes in old items must be filed at the offices of this Department not later than Thursday, May 7, 1942. It is requested that:

(1) Complete schedule of all items for which price maintenance is desired, including those presently listed, should be submitted. Any items not submitted will be considered withdrawn.

(2) If no change in brand name or description is made of items presently subject to price maintenance, list those items exactly as they appear in the pamphlets or official bulletins.

(3) Indicate by appropriate notation the new items which will be scheduled for the first time, and those items in which a change in brand name or description is made.

Notification of the proportionate share of the aggregate expense involved will be made to participating companies as soon as the pamphlet price list is mailed to retail licensees.

Unless you advise me in writing, on or before May 7, 1942, that you agree to pay your share of the cost of such complete publication, it will be deemed that you are not desirous of participating therein. In such case, your products will be withdrawn from the fair trade price list, and will no longer be subject to protection and enforcement by this Department.

Very truly yours,
ALFRED E. DRISCOLL,
Commissioner.

12. APPELLATE DECISIONS - LIPSCHITZ v. HILLSDALE AND FRANTIN.

LOUIS LIPSCHITZ, trading as)
PARK WINE & LIQUOR STORES,)
Appellant,)

-vs-

ON APPEAL
ORDER OF DISMISSAL

BOROUGH COUNCIL OF THE BOROUGH)
OF HILLSDALE and WALTER FRANTIN,)
trading as FRANTINS' DELICATESSEN &)
LIQUOR SHOP,)
Respondents)

Herman C. Silverstein, Esq., Attorney for Appellant.
George W. Babcock, Esq., Attorney for Respondents.

BY THE COMMISSIONER:

A stipulation of discontinuance having been filed herein by the attorney for the appellant, and the attorney for the respondents having duly consented thereto, and no reason appearing why the appeal should not be dismissed,

It is, on this 2nd day of May, 1942,

ORDERED, that the within appeal be and the same is hereby dismissed.

Alfred E. Driscoll
Commissioner.

New Jersey State Library

CHECKED BY N.J.S.