

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

BULLETIN 750

FEBRUARY 26, 1947.

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - HALL v. MOUNT EPHRAIM.
2. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF LIQUOR THROUGH NEW JERSEY IN UNLICENSED VEHICLE - FAMILY CAR - VEHICLE AND CONTENTS DECLARED UNLAWFUL PROPERTY AND FORFEITED WHERE LIQUOR INTENDED FOR DELIVERY IN VIOLATION OF THE LAW OF THE STATE OF DESTINATION.
3. DISCIPLINARY PROCEEDINGS (Butler) - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
4. DISCIPLINARY PROCEEDINGS (Paterson) - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
5. DISCIPLINARY PROCEEDINGS (Newark) - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
6. DISCIPLINARY PROCEEDINGS (Closter) - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR 30 DAYS.
7. APPELLATE DECISIONS - GALLAGHER AND SPRING LAKE CHATEAU, INC. v. SPRING LAKE.
8. DISCIPLINARY PROCEEDINGS (Ocean Township) - ILLICIT LIQUOR - BALANCE OF SUSPENSION, TEMPORARILY STAYED, REIMPOSED - SUBSEQUENT ILLICIT LIQUOR VIOLATION - LICENSE SUSPENDED FOR TOTAL OF 41 DAYS.
9. DISCIPLINARY PROCEEDINGS (East Rutherford) - CLUB LICENSEE - SALE OF ALCOHOLIC BEVERAGES TO NON-MEMBERS - LOTTERY TICKETS SOLD ON LICENSED PREMISES - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
10. APPELLATE DECISIONS - BATES v. MONROE AND FOSS.
11. STATE LICENSES - NEW APPLICATIONS FILED.
12. DISCIPLINARY PROCEEDINGS (Neptune) - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

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

BULLETIN 750

FEBRUARY 26, 1947.

1. APPELLATE DECISIONS - HALL v. MOUNT EPHRAIM.

LENA HALL, Executrix under the )  
Last Will and Testament of )  
Claude R. Hall, deceased, )  
Appellant, )  
-vs- ) ON APPEAL  
BOARD OF COMMISSIONERS OF THE ) CONCLUSIONS AND ORDER  
BOROUGH OF MOUNT EPHRAIM, )  
Respondent )

Benjamin J. Dzick, Esq. and Charles E. Kulp, Esq., Attorneys for Appellant.  
George D. Rothermel, Esq., Attorney for Respondent.

This is an appeal from a denial of an extension of a 1945-46 plenary retail consumption license and a denial of renewal of the license for the license year 1946-47. The premises are located on the southwest corner of Black Horse Pike and West Kings Highway, Mount Ephraim.

Claude R. Hall, holder for some twelve years of a plenary retail consumption license for the premises in question, died on May 28, 1946. On June 11, 1946 the appellant qualified as executrix of the estate of Claude R. Hall, deceased. On June 24, 1946, the appellant applied for a 1946-47 renewal of the license in her representative capacity. On June 26, 1946, the appellant filed a petition for extension of the late Claude R. Hall's license for the balance of the 1945-46 term.

It appears from the record that the respondent Board met on June 25, 1946 (one day before the extension petition was filed) and at that meeting took no action on the renewal application; that at the respondent Board's next regular meeting held July 9, 1946, no action was taken on either the petition for extension or application for renewal; and that on July 23, 1946, the respondent denied both the extension petition and the renewal application.

The extension petition made on June 26th was timely, as was the renewal application filed June 24th. (See P. L. 1939, Chapter 281 as amended by P. L. 1944, Chapter 187, Revised Statutes 33:1-96). The right to appeal from denial of an extension of a license is granted by P. L. 1946, Chapter 316, effective May 6, 1946, amending Revised Statutes 33:1-26.

As to the merits: Six letters to the respondent, containing general objections to renewal of the license in question, were introduced in evidence. The respondent's principal contention, however, in support of its denial action is that during the period that Claude R. Hall held the license, and particularly during the last two or three years of such period, numerous complaints were received pursuant to which members of the Borough's Police Department were called to subdue disorders on the licensed premises; that minors were permitted to congregate on the licensed premises, and that the licensee was warned by the Police Department with respect to these matters. Three members of the Police Department related that on a number of specified occasions they were called upon to quiet disturbances on the licensed premises. However, no arrests appear to have been made, nor were charges ever preferred against the licensee Claude R. Hall, and there is no evidence that he sold or permitted alcoholic beverages to be sold to minors.

In Monesson v. Lakewood Township, Bulletin 657, Item 1, where renewal was denied upon the same type of evidence presented in the instant case, the Commissioner used the following language, which is peculiarly apt with respect to the facts herein:

"As I have heretofore pointed out on many occasions, the grant of a renewal license, like that of an original license, is subject to the exercise of a reasonable discretion by the local issuing authority. Where, however, as in this case, a license has been renewed year after year, a refusal to renew thereafter must be founded upon valid and substantial grounds, supported by the weight of the evidence. Cf. Vasto v. Highlands, Bulletin 622, Item 4; Wright v. Gloucester, Bulletin 622, Item 5.

"If during the course of a licensing year, evidence of misconduct is brought to the attention of the issuing authority, proper investigation should be made and, if warranted, disciplinary proceedings for the suspension or revocation of the license instituted. See R. S. 33:1-24.....Common fairness to the licensee dictates that a subsequent refusal to renew.....should be supported by probative proof of misconduct during the fiscal year immediately preceding.....Cf. Wright v. Gloucester, supra."

Appellant herein was clearly at a disadvantage because death has prevented Claude R. Hall from giving his testimony concerning the hereinabove mentioned charges regarding disturbances on the licensed premises. Assuming, but not deciding, that the evidence adduced herein as to such disturbances was properly admissible under the circumstances, the mere calling of the police on divers occasions, without proof that the licensee or his employees ever engaged in, or permitted, allowed or suffered the disturbances, appears clearly insufficient to warrant the respondent's action herein appealed from. Granting, on the question of reasonableness of an issuing authority's exercise of its discretionary power to grant or deny a renewal, that within the facts and circumstances of given cases there may be a real distinction between denial of renewal to a licensee and denial of renewal to a personal representative, I conclude from the record before me in the instant case that, as to the merits, the respondent's action was unreasonable.

Because of the local ordinance of limitation, no new license, as distinguished from a renewal, may be issued in the respondent municipality. As a result, two questions arise: May a local issuing authority, after a license has expired on June 30th, the end of the licensing year, grant an application for extension timely filed prior to the end of the licensing year? If so, may an extension, so granted, qualify the applicant for a renewal license?

The precise problem has not heretofore been litigated in appellate proceedings before the State Commissioner. Upon general principles, however, the questions must be answered in the affirmative. Where, as in this case, an applicant for extension has completed a timely application and nothing further remains to be accomplished except action thereon by the issuing authority, the applicant's right to relief may not be defeated merely because of the failure of the authority to take action thereon prior to the expiration of the licensing year. Otherwise, through no culpable fault of the applicant, the right to relief and, indeed, the right of appeal, may be lost to the applicant. Such an unfair and harsh result should and can be avoided by holding that a timely, completed extension application may be considered and adjudicated by the issuing authority during the ensuing licensing year. Cf. Re Schloeder, Bulletin 338, Item 8.

Since no reason appears why the extension should not have been granted, the applicant for extension should be considered as "the holder of the expired....license" within the contemplation of R. S. 33:1-96, which sets forth the necessary qualifying requisites for issuance of a renewal license.

Applying these principles to the instant situation, it appears that the respondent was empowered to grant the extension and also the renewal on July 23, 1946.

Accordingly, it is, on this 14th day of February, 1947,

ORDERED that the respondent's action denying the appellant's extension application and renewal application be and the same is hereby reversed; and it is further

ORDERED that the respondent issue a plenary retail consumption license, as applied for, for the present fiscal year, to Lena Hall, executrix of the estate of Claude R. Hall, deceased.

ERWIN B. HOCK  
Deputy Commissioner.

2. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF LIQUOR THROUGH NEW JERSEY IN UNLICENSED VEHICLE - FAMILY CAR - VEHICLE AND CONTENTS DECLARED UNLAWFUL PROPERTY AND FORFEITED WHERE LIQUOR INTENDED FOR DELIVERY IN VIOLATION OF THE LAW OF THE STATE OF DESTINATION.

In the Matter of the Seizure )  
on March 21, 1946 of 408 - 4/5 )  
quart bottles of various brands )  
of whiskey, and a Chrysler sedan, )  
at the circle of Tonnele Avenue )  
and Route 1, in the City of Jersey )  
City, County of Hudson and State )  
of New Jersey. )  
----- )

Case No. 6965

ON HEARING  
CONCLUSIONS AND ORDER

Maurice M. Krivit, Esq., by William Reger, Esq., Attorney for Mrs. Rose Cambria.

Harry Castelbaum, Esq., appearing for the State Department of Alcoholic Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether 408 - 4/5 quart bottles of whiskey and a Chrysler sedan, described in a schedule attached hereto, seized on March 21, 1946 in Jersey City, N. J., constitute unlawful property and should be forfeited.

The above sedan, bearing West Virginia license plates, was stopped by Jersey City police officers because Anthony Joseph Cambria, the operator of the vehicle, drove on the wrong side of an underpass leading into Tonnele circle. When the officers discovered whiskey in the car, which was not licensed to transport alcoholic beverages in New Jersey, they arrested Cambria and his companion, Albert Kriegman, and seized the car and whiskey.

Cambria told the police officers that he is the owner of a night club in Wheeling, West Virginia and that he came to New York on March 19, 1946 to obtain alcoholic beverages from Frank Gulmi, who had previously arranged with Cambria's father to provide them with such alcoholic beverages; that he left the car with Gulmi and later

picked it up loaded with alcoholic beverages; that he was transporting these alcoholic beverages to Wheeling, West Virginia for resale at his night club; and that on a previous occasion he had picked up alcoholic beverages from Gulmi under a similar arrangement.

The serial numbers on the cases of whiskey, by which the whiskey could be traced back to the retailer, had been destroyed or obliterated.

The motor vehicle and alcoholic beverages were turned over to the State Department of Alcoholic Beverage Control.

Under the Alcoholic Beverage Law, alcoholic beverages may only be transported in this state pursuant to a license or permit issued by the State Commissioner of Alcoholic Beverage Control, excepting a limited quantity intended for personal consumption. R. S. 33:1-2. Any person transporting alcoholic beverages in this state without such license or permit may be stopped and required to account for his activities. If such person can then establish that he is merely transporting the alcoholic beverages through this state and has otherwise complied with the provisions of Rule 2 of State Regulations No. 18, he is permitted to continue such transportation without further interruption.

Under the aforementioned Rule, the driver of the vehicle must establish, by documentary or other evidence, that the alcoholic beverages are legitimate in origin, are not intended for delivery, sale or use in New Jersey, and may be lawfully delivered to their destination, whether for personal consumption or otherwise. In short, it must be a bona fide enterprise. Cf. Re Hygrade Bakery Co., Bulletin 556, Item 9, and Re McPhee, Seizure Case 6564.

Under the law of West Virginia, Cambria could not import the whiskey into that state for resale there. Indeed, he could not bring more than one gallon into the state even for personal consumption. (West Virginia Laws 1935, Chapter 5, Article VI, Sections 6, 12 and 13) Hence, Cambria, in seeking to import the whiskey into West Virginia in violation of its laws, was not engaged in a bona fide, legitimate enterprise.

Consequently, the whiskey was being transported in this state in violation of R. S. 33:1-2 and Rule 2 of State Regulations No. 18 and is, therefore, illicit. R. S. 33:1-1(i). Illicit alcoholic beverages, and the vehicle in which they are transported, are subject to forfeiture. R. S. 33:1-1(y), R. S. 33:1-66.

The whiskey can, in no event, be returned because Cambria cannot legally bring it into West Virginia.

When the matter came on for hearing pursuant to R. S. 33:1-66, Cambria's mother, Mrs. Rose Cambria, in whose name the motor vehicle is registered, appeared with counsel and sought return of the motor vehicle. Forfeiture of the whiskey was not opposed.

Under R. S. 33:1-66(f), I have the discretionary authority to return property subject to forfeiture to a person who has satisfied me (1) that he acted in good faith and (2) that he had no knowledge of the unlawful use to which the property was put or of such facts which would have led a person of ordinary prudence to discover such use.

Cambria intended to resell the whiskey in his home state in violation of its laws. Under those circumstances, if he applied for return of the car unlawfully used by him to transport such whiskey in New Jersey, his request would be denied.

The question for determination is whether his mother stands in any better position.

According to Mrs. Cambria's testimony, she purchased the car in May, 1943, for family use, for \$1,400.00. She has been married for 40 years. Her family consists of herself, her husband and her son. The car is used, as a matter of course, by her husband and her son. She is a housewife and has not driven the car for over two years. Her husband has had a tavern in Wheeling, West Virginia ever since Repeal and serves beer and lunches. Her son helps out in the tavern. They are not permitted to sell alcoholic beverages other than beer.

Mrs. Cambria seeks return of the car on the claim that she was ignorant of the fact that the family car was to be used to bring alcoholic beverages from New York. She also claims that she does not know of any occasion in the past when either her husband or her son was arrested or convicted of any crime. There is a record in the police files of Wheeling, West Virginia, of the arrest and conviction in 1938 of Joe Cambria, residing at Mrs. Cambria's address, on charge of selling and possessing whiskey. It may be assumed this is either her husband or her son.

It is clear that Mrs. Cambria's husband participated in, and probably was a major factor, in arranging to bring alcoholic beverages unlawfully to his tavern in Wheeling.

The evidence strongly suggests that the motor vehicle may have been registered in the name of Mrs. Cambria merely as a convenience, or custom of the family, but is actually her husband's car. In view of her non-use of the vehicle for at least two years, there arises a compelling inference that she had to all intents and purposes abandoned control of its use, and acquiesced in whatever use was made thereof by her husband or son.

In any event, I am not compelled to accept Mrs. Cambria's testimony that she was ignorant of the fact that her son and husband were obtaining alcoholic beverages from outside the state, merely because it is uncontradicted. As between husband and wife, normally each may be presumed to know of the other's misdeeds. Seizure Case 6990, Bulletin 731, Item 5. To a somewhat lesser extent, a mother may be presumed to know of most of the activities of a son who resides with her, especially those activities related to her husband's business. It is to be noted that, according to Mrs. Cambria, she was not unduly alarmed although her son, without advising her in advance, was absent from home with the car from Sunday to Thursday. The probability is that this was because she knew of his mission.

I cannot conscientiously exercise my discretionary authority in favor of Mrs. Cambria under such circumstances. To do so would serve to lessen the effective forfeiture penalty for violation of the law governing the transportation of alcoholic beverages, in that it might encourage other persons to register vehicles, used to violate the liquor laws, in the name of close relatives to avoid forfeiture of such vehicles. This principle has been very well expressed in United States v. One Plymouth Coupe, 14 F. Supp. 610 (D. C. Md. 1936).

Mrs. Cambria's application for return of the motor vehicle is therefore denied. This is in accord with the action taken by this Department in many similar cases involving close relatives. See Seizure Case 5174, Bulletin 354, Item 4, Seizure Case 5460, Bulletin 361, Item 15, Seizure Case 6145 and Seizure Case 6282. (The latter two cases are not reported in the Departmental Bulletin.)

Accordingly, it is DETERMINED and ORDERED that the seized Chrysler sedan and whiskey, more fully described in Schedule "A" hereinafter set forth, 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 such forfeited property be sold, in whole or in part, at public sale for the use of the State, subject to the rules and regulations governing such sale, or be destroyed or retained for the use of hospitals and State, county or municipal institutions, whichever the State Commissioner of Alcoholic Beverage Control may hereafter determine to be for the best interest of the State.

ERWIN B. HOCK  
Deputy Commissioner.

Dated: February 11, 1947.

SCHEDULE "A"

34.- cases containing approximately 408 - 4/5 quart bottles of various brands of whiskey

1 - 1941 Chrysler sedan, Serial No. 7914706, Engine No. 62830321, 1946 West Virginia Registration 41-158.

3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against  
JOSEPH DILZER  
9 Oak Street  
Butler, N. J.,  
Holder of Plenary Retail Consumption License C-5, issued by the Borough Council of the Borough of Butler.

CONCLUSIONS  
AND ORDER

Meehan Brothers, Esqs., by John J. Meehan, Esq., Attorneys for Defendant-licensee.  
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant pleaded non vult to a charge alleging that he sold a 4/5 quart bottle of "Don Q Puerto Rican Rum" below the established minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

On January 17, 1947, a bartender then in charge of defendant's licensed premises sold to an agent of the State Department of Alcoholic Beverage Control the 4/5 quart bottle of rum above described for the price of \$2.25. The established minimum resale price of this product is \$3.72. Bulletin 690.

Defendant has the following record of convictions: (1) October 7, 1940, suspension of five days for sale on Sunday; and (2) September 9, 1943, suspension of twenty days for possession of illicit liquor (refills). I shall, therefore, suspend defendant's license for twenty days and remit five days thereof because of the plea, leaving a net suspension of fifteen days.

Accordingly, it is, on this 19th day of February, 1947,

ORDERED that Plenary Retail Consumption License C-5, issued by the Borough Council of the Borough of Butler to Joseph Dilzer, for premises 9 Oak Street, Butler, be and the same is hereby suspended

for a period of fifteen (15) days, commencing at 3:00 a.m. February 27, 1947, and terminating at 3:00 a.m. March 14, 1947.

ERWIN B. HOCK  
Deputy Commissioner.

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

In the Matter of Disciplinary Proceedings against )

JOSEPH GALASKAS )  
27 N. Main Street )  
Paterson 2, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-145, issued by the Board of Alcoholic Beverage Control of the City of Paterson. )  
----- )

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

Defendant pleads non vult to a charge that he possessed one 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky", the contents of which were not genuine as labeled, in violation of R. S. 33:1-50.

On December 5, 1946, a Federal ATU agent seized the bottle in question after a preliminary test indicated that the contents thereof were not genuine as labeled. Subsequent analysis by a Federal chemist disclosed differences in characteristics between the whisky described on the label and that contained in the bottle.

Defendant denies any knowledge relative to the violation. However, a licensee is responsible for any "refills" found in his stock of liquor. Re Kurian, Bulletin 517, Item 2.

Defendant has no prior adjudicated record. I shall, therefore, suspend his license for a period of fifteen days, less five days' remission for the plea entered herein, or a net suspension of ten days. Re Jegge, Bulletin 744, Item 3.

Accordingly, it is, on this 17th day of February, 1947,

ORDERED that Plenary Retail Consumption License C-145, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Joseph Galaskas, 27 N. Main Street, Paterson, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. February 24, 1947, and terminating at 3:00 a.m. March 6, 1947.

ERWIN B. HOCK  
Deputy Commissioner.

5. 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 )

THE CHARLES LIQUOR STORES, INC. )  
949 Broad Street )  
Newark 2, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-67, issued by the )  
Municipal Board of Alcoholic )  
Beverage Control of the City of )  
Newark. )  
----- )

Harkavy and Lieb, Esqs., by Abraham I. Harkavy, Esq., )  
Attorneys for Defendant-licensee. )  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic )  
Beverage Control. )

Defendant has pleaded non vult to a charge alleging that it sold a pint bottle of "Old Hermitage Brand Whiskey, A Blend" below the minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

On January 10, 1947, defendant, through its agent or servant then in charge of its licensed premises, sold to an agent of the State Department of Alcoholic Beverage Control the pint bottle of whiskey above described for the price of \$2.31. The minimum resale price of this product was \$2.51. Bulletin 740.

Defendant has no prior adjudicated record. I shall suspend its license for ten days and remit five days thereof because of the plea, leaving a net suspension of five days. Re Mack Drug Co., Inc., Bulletin 695, Item 9.

Accordingly, it is, on this 19th day of February, 1947,

ORDERED that Plenary Retail Distribution License D-67, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to The Charles Liquor Stores, Inc., for premises 949 Broad Street, Newark, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. February 24, 1947, and terminating at 9:00 a.m. March 1, 1947.

ERWIN B. HOCK  
Deputy Commissioner.

6. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION  
CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO  
EXERCISE THE RIGHTS AND PRIVILEGES OF LICENSE - ILLEGAL SITUATION  
CORRECTED - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary )  
Proceedings against )  
VICTOR SERTI )  
Piermont Road )  
Closter, N. J., )  
Holder of Plenary Retail Consump- )  
tion License C-7 issued by the )  
Mayor and Council of the Borough )  
of Closter. )

CONCLUSIONS  
AND ORDER

-----  
Walter R. Huck, Esq., Attorney for Defendant-licensee.  
William F. Wood, Esq., appearing for Department of Alcoholic  
Beverage Control.

Defendant pleads non vult to the following charges:

"1. In your application filed with the Mayor and Council of the Borough of Closter, N. J., and upon which you obtained your current plenary retail consumption license for premises on Piermont Road, Closter, you answered 'No' to Question 30, 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 one Fred Battiston was and is a partner in the said business; such false statement being in violation of R. S. 33:1-25.

"2. From about July 31, 1946 and until the present time, you knowingly aided and abetted the said Fred Battiston to exercise, contrary to R. S. 33:1-26, the rights and privileges of your plenary retail consumption license for the aforesaid premises, thereby yourself violating R. S. 33:1-52."

The file in the instant case discloses that defendant and one Fred Battiston were partners in the liquor business conducted under the license obtained for the current licensing period.

Defendant admits the existence of the partnership. He contends, however, that it was his intention to transfer the liquor license in the partnership name as soon as Battiston became better known by the residents in the vicinity of the licensed premises. The record, however, indicates that the reason for the "front" was because Battiston was not a resident of New Jersey at the time that the defendant applied for transfer of the license.

During pendency of these proceedings defendant submitted proof that he had acquired all the right, title and interest that Battiston had in the business and is now the sole owner thereof. The prior unlawful situation appears to have been corrected. Nevertheless, the nature of the violation heretofore committed warrants a suspension of the license.

Defendant has no previous adjudicated record. I shall suspend his license for a period of thirty days.

Accordingly, it is, on this 19th day of February, 1947,

ORDERED that Plenary Retail Consumption License C-7, issued by the Mayor and Council of the Borough of Closter to Victor Serti, for premises on Piermont Road, Closter, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 a.m. February 26, 1947, and terminating at 2:00 a.m. March 28, 1947.

ERWIN B. HOCK  
Deputy Commissioner.

7. APPELLATE DECISIONS - GALLAGHER AND SPRING LAKE CHATEAU, INC. v. SPRING LAKE.

ANDREW J. GALLAGHER and )  
SPRING LAKE CHATEAU, INC., )  
body corporate, )

Appellants, )

-vs- )

BOROUGH COUNCIL OF THE BOROUGH )  
OF SPRING LAKE, )

Respondent )

ON APPEAL  
CONCLUSIONS AND ORDER

-----  
Ward Kremer, Esq., Attorney for Appellants.  
Gilbert H. Van Note, Esq., Attorney for Respondent.

This is an appeal from the denial of an application filed by appellant Spring Lake Chateau, Inc. for a seasonal retail consumption license (expiring November 1, 1946) for premises at the N/W corner of Fifth and Warren Avenues, Borough of Spring Lake.

Appellants allege that the action of respondent was erroneous because they expended large sums of money in the expectation of securing a license, and the denial of the application in question was arbitrary, unreasonable and an abuse of discretion. The answer herein alleges that the application was denied for the reason that there were sufficient licenses of all types for the sale of alcoholic beverages in the Borough of Spring Lake.

The local ordinance provided that no consumption license may be issued "except for a hotel with 18 or more sleeping rooms." Appellant Andrew J. Gallagher purchased the premises in question in 1940 or 1941. Apparently the building at that time contained more than eighteen sleeping rooms, but the premises were in a dilapidated condition. The building was rented out to other persons during the succeeding summer periods to and including the summer of 1945, but no attempt to obtain a liquor license for the premises was made during that period of time. In the early part of 1946, Andrew J. Gallagher made extensive repairs and alterations, with the result that the hotel now contains twenty-five sleeping rooms. On May 31, 1946, appellant Spring Lake Chateau, Inc. applied for the license in question. The application was denied on July 1, 1946. Hence this appeal.

The fact that the appellants (or one of them) expended large sums of money in the expectation of securing a license is not a sufficient reason for reversing the action of respondent. As pointed out, the local ordinance provided that no consumption licenses may be issued except for a hotel with eighteen or more sleeping rooms; but such a provision does not require that a license must be issued to every hotel which meets this qualification. In Hosts, Inc. v. Point Pleasant Beach, Bulletin 732, Item 2, it was said:

"However, while there should be no discrimination against hotels, hotels are not entitled, as of right, to a liquor license. The test is public necessity and convenience -- not whether a given place is an hotel or not. Lincoln Ave. Corp. v. Wildwood, Bulletin 540, Item 2."

The question remains as to whether appellants have sustained the burden of proof to show that the action of respondent was unreasonable because of a need, in fact, for an additional seasonal retail consumption license in the Borough of Spring Lake.

The evidence herein indicates that the permanent population of the Borough is approximately 2,500 at the present time. The Federal census for 1940 discloses that the population of the Borough at that time was 1,650. At the hearing herein, the peak summer population was variously estimated from 10,000 to 25,000, but it is difficult to determine the correct figure, and I am inclined to believe that the smaller figure is more nearly correct. Cf. Gain v. Spring Lake, Bulletin 719, Item 7. At the time appellant's application was denied, two plenary retail consumption licenses and three seasonal retail consumption licenses had been issued to qualified hotels; one club license had been issued, and also three plenary retail distribution licenses.

The five consumption licenses would appear to be sufficient if only the permanent population of the Borough is considered. Whether an additional seasonal retail consumption license is necessary to take care of the needs of the summer population is a question on which reasonable men may well differ. Appellants contend that an additional license is necessary because the Essex and Sussex Hotel, under a seasonal consumption license, and the Monmouth Hotel, which holds a plenary retail consumption license, cater only to their respective guests, and that Sullivan's Lodge, which holds the other plenary retail consumption license and caters to "casual" customers, is so crowded that prompt service cannot be obtained. Appellants produced several witnesses who testified as to the crowded condition in the latter place, but these witnesses visited the place on Friday or Saturday night, which, of course, are the busiest nights during the week. On the other hand, there is evidence that a visitor may purchase alcoholic beverages in any of the five licensed hotels. Under all these circumstances, it cannot be said that the respondent acted unreasonably in denying the application herein pursuant to its determining that there were sufficient licenses of all types for the sale of alcoholic beverages in the Borough.

Since appellants have not sustained the burden in showing that the action of respondent was arbitrary or unreasonable, the action of respondent will be affirmed.

Accordingly, it is, on this 19th day of February, 1947,

ORDERED that the action of respondent be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK  
Deputy Commissioner.

8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - BALANCE OF SUSPENSION, TEMPORARILY STAYED, REIMPOSED - SUBSEQUENT ILLICIT LIQUOR VIOLATION - LICENSE SUSPENDED FOR TOTAL OF 41 DAYS.

In the Matter of Disciplinary Proceedings against )

CHARLES E. BETZ )  
T/a CHARLOE'S BAR & GRILL )  
West Park Avenue and Route 35 )  
Ocean Township )  
P.O. R.F.D. 1, Asbury Park, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Ocean. )  
----- )

Proctor & Nary, Esqs., by Haydn Proctor, Esq., Attorneys for Defendant-licensee.

William F. Wood, Esq., Attorney for Department of Alcoholic Beverage Control.

Defendant pleaded non vult to a charge alleging that, on October 3, 1946, he possessed an illicit alcoholic beverage, to wit, a bottle of "Lauder's Royal Northern Cream Blended Scotch Whisky", which contained an alcoholic beverage not genuine as labeled, in violation of R. S. 33:1-50.

The normal penalty of fifteen days for this violation must be doubled because the defendant's license was heretofore suspended on a similar charge on August 14, 1946. See Bulletin 726, Item 6. In this prior case, the 25-day suspension therein imposed was temporarily interrupted after four days of the suspension had been served, leaving a net penalty of twenty-one days remaining. See Bulletin 727, Item 12. However, since the defendant had entered a plea of non vult in that case, five additional days should be remitted from the total penalty (cf. Re Gelb, Bulletin 741, Item 8), resulting in a total of sixteen days still to be served with respect to that case. See also Re Suspension in Illicit Liquor Cases, Bulletin 743, Item 2.

On the instant charge, five days will also be remitted because of the plea herein. The total penalty which the defendant must now serve, therefore, amounts to a period of forty-one days.

Accordingly, it is, on this 20th day of February, 1947,

ORDERED that Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Ocean to Charles E. Betz, t/a Charloe's Bar & Grill, West Park Avenue and Route 35, Ocean Township, be and the same is hereby suspended for a period of forty-one (41) days, commencing at 3:00 a.m. February 25, 1947, and terminating at 3:00 a.m. April 7, 1947.

ERWIN B. HOCK  
Deputy Commissioner.

9. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - SALE OF ALCOHOLIC BEVERAGES TO NON-MEMBERS - LOTTERY TICKETS SOLD ON LICENSED PREMISES - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

VILLOTTO RIGGIN POST #67, )  
AMERICAN LEGION, INC. )  
Grove Street & Clinton Place )  
East Rutherford, N. J., )

CONCLUSIONS AND ORDER

Holder of Club License CB-32, issued by the State Commissioner of) Alcoholic Beverage Control. )  
- - - - - )

Herbert F. Myers, Jr., Esq., Attorney for Defendant-licensee.  
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant, through its attorney, pleads non vult to the following charges:

"1. On Wednesday afternoon, December 18, 1946, between 3:00 p.m. and 3:30 p.m., you, a club licensee, sold alcoholic beverages to persons not members of your club or bona fide guests of such members, thereby violating Rule 8 of State Regulations No. 7.

"2. On the aforesaid occasion you allowed, permitted and suffered tickets and participation rights in a lottery to be sold and offered for sale on and about your licensed premises, in violation of Rule 6 of State Regulations No. 20."

The departmental file discloses that on December 18, 1946, two ABC investigators purchased alcoholic beverages on defendant's licensed premises. Neither of the investigators was a member or a guest of a member of the defendant association. One of the investigators purchased a subscription from the bartender representing two participation shares in a lottery sponsored by defendant association. The ticket received by the investigator indicated that an award of an article of merchandise was to be made at defendant's club headquarters at some future date.

Rule 6 of State Regulations No. 20 provides:

"No licensee shall allow, permit or suffer any lottery to be conducted, or any ticket or participation right in any lottery to be sold or offered for sale, on or about the licensed premises."

In the absence, as here, of any previous record, I shall impose suspensions of fifteen days and five days, respectively, on the first and second charges herein. Five days will be remitted for the plea, leaving a net suspension of fifteen days.

Accordingly, it is, on this 20th day of February, 1947,

ORDERED that Club License CB-32, issued by the State Commissioner of Alcoholic Beverage Control to Villotto Rigginn Post #67, American Legion, Inc., for premises Grove Street & Clinton Place East Rutherford, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. February 24, 1947, and terminating at 2:00 a.m. March 11, 1947.

ERWIN B. HOCK  
Deputy Commissioner.

10. APPELLATE DECISIONS - BATES v. MONROE AND FOSS.

VICTORIA SZUBA BATES, )  
Appellant, )

-vs-

CONCLUSIONS  
AND ORDER

TOWNSHIP COMMITTEE OF THE )  
TOWNSHIP OF MONROE (Middlesex )  
County), and RAYMOND LOUIS FOSS, )  
t/a UNION VALLEY TAVERN, )  
Respondents )

Edmund A. Hayes, Esq., by John T. Keefe, Esq., Attorneys for Appellant.

Henry C. Berg, Esq., Attorney for Respondent Township Committee.  
Benjamin Kleinberg, Esq., Attorney for Respondent Raymond Louis Foss.

This is an appeal from the denial of appellant's application to transfer to her a plenary retail consumption license held by Raymond Louis Foss.

The denial was based solely upon the fact that the application for the transfer lacked a jurisdictional requirement, namely, the consent of the licensee, respondent Foss.

The evidence, purely documentary, and admitted without question, discloses that:

On October 30, 1944, appellant, owner of the premises in question, and respondent Foss entered into an agreement of lease whereby appellant leased to said respondent certain premises to be used as a tavern for a term of two years ending October 31, 1946.

This lease contained an agreement as follows:

"At the termination of this lease the tenant will transfer to the landlord the liquor license under which he is operating the licensed premises, the landlord to pay therefor the pro rata portion of the unearned license fee; and the tenant will do all necessary acts and sign all papers necessary to make the transfer effective at the termination of this lease."

Respondent Foss, from approximately November 1, 1944 to October 31, 1946, operated a tavern on said leased premises pursuant to successive licenses issued to him by respondent Township Committee. On or about October 31, 1946, Foss vacated the premises in question and sought transfer of his license to other premises, which application was denied.

On September 23, 1946, appellant filed an application for the transfer to herself of the license issued to respondent Foss about July 1, 1946 and duly advertised notice thereof.

On October 3, 1946, respondent Foss filed with respondent Township Committee an objection to said transfer alleging his failure to consent to said transfer and reiterating his claim to "ownership" of said license.

The sole question raised herein is: Was there a sufficient "consent" to the transfer.

The Alcoholic Beverage Law, R. S. 33:1 et seq. provides, in part, "which application for transfer \*\*\* shall bear the consent in writing of the licensee \*\*\*." R. S. 33:1-26. This "consent in writing" is a jurisdictional requirement; its lack divests the Township Committee of any jurisdiction to approve the transfer sought. Grace v. Egg Harbor et als., Bulletin 403, Item 9; Re Middletown, Bulletin 129, Item 5.

The agreement in the lease between the parties, even if in fact filed with the local issuing authority, cannot be accepted as a substitute for the statutory requirement. Norton v. Union, Bulletin 709, Item 5. Only the Township Committee could transfer the license. Moreover, it has been held that such an agreement in a lease gives an owner an improper control of the license and is unenforceable. Rawlins v. Trevethan, 139 N. J. Eq. 226.

The respondent Township Committee as a local issuing authority, having no jurisdiction because of the lack of a "consent in writing", properly denied the transfer. Cf. Bachman v. Phillipsburg, 68 N. J. L. 552.

The action of respondent Township Committee of the Township of Monroe is affirmed.

Accordingly, it is, on this 24th day of February, 1947,

ORDERED that the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK  
Deputy Commissioner.

11. STATE LICENSES - NEW APPLICATIONS FILED.

Peerless Beverage Company  
1000 Morris Ave.  
Union, N. J.

Application filed February 21, 1947 for transfer of State Beverage Distributor's License SBD-45 from Charles Salzman and Bernard J. Heinzman, t/a Peerless Beverage Company.

ERWIN B. HOCK  
Deputy Commissioner.

12. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against  
 JAMES J. COLT  
 T/a JUMPING BROOK GOLF AND COUNTRY CLUB  
 Jumping Brook Road  
 Neptune, N. J.,  
 Holder of Plenary Retail Consumption License C-13, issued by the Township Committee of the Township of Neptune.

CONCLUSIONS AND ORDER

-----  
 Haydn Proctor, Esq., Attorney for Defendant-licensee.  
 William F. Wood, Esq., Attorney for Department of Alcoholic Beverage Control.

The defendant pleaded non vult to a charge alleging that, on July 23, 1946, he possessed four bottles of illicit alcoholic beverages, to wit, a bottle of "Old Ripy Straight Bourbon Whiskey", a bottle of "Old Taylor Kentucky Straight Bourbon Whiskey", a bottle of "Gilbey's Spey-Royal Scotch Whisky A Blend" and a bottle of "Taylor Martin Blended Scotch Type Whisky", all of which contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

There is nothing in the entire record to indicate that the licensee or any of his responsible associates in the business were personally implicated in the violation or had any knowledge thereof. It would appear that the offense resulted from the machinations of a disgruntled or greedy bartender. Despite personal innocence, however, the licensee must be held to strict accountability for the condition of his stock of liquor. Re Kurian, Bulletin 517, Item 2.

This is the first time that the defendant has been cited in disciplinary proceedings. The usual twenty-day penalty will be imposed. Re Johnson, Bulletin 680, Item 10. Five days will be remitted because of the plea, leaving a net penalty of fifteen days. Re Gelb, Bulletin 741, Item 8.

Accordingly, it is, on this 24th day of February, 1947,

ORDERED that Plenary Retail Consumption License C-13, issued by the Township Committee of the Township of Neptune to James J. Colt, t/a Jumping Brook Golf and Country Club, Jumping Brook Road, Neptune, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. February 27, 1947, and terminating at 2:00 a.m. March 14, 1947.

*Erwin B. Hoch*  
 Deputy Commissioner.