

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

BULLETIN 771

JULY 15, 1947

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

BULLETIN 771

JULY 15, 1947.

1. DISQUALIFICATION - APPLICATION TO LIFT - FIVE YEARS' GOOD CONDUCT -
APPLICATION GRANTED.

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

CONCLUSIONS
AND ORDER

BY THE COMMISSIONER:

On February 1, 1930, petitioner was convicted in the Court of Quarter Sessions of another state of the crime of robbery and was sentenced to a reformatory for an indeterminate term. He was paroled from the reformatory on March 13, 1931, and discharged from parole on September 29, 1931. He has never been convicted of any other crime. The crime of robbery per se involves moral turpitude.

Petitioner produced three witnesses, each of whom testified that he has known petitioner for a period of at least eight years and that he has been a law-abiding citizen during that period of time.

Ordinarily I would remove petitioner's disqualification without hesitation, but it appears that, for a period of a few months during the early part of 1947, he was employed as a bartender in his brother's licensed premises in the State of New Jersey. At the hearing petitioner testified that the Liquor Control Board of the state where he formerly resided had permitted him to be employed as a bartender in that state after a hearing was held before said Board approximately five or six years ago. Petitioner testified that he therefore believed he was eligible to work as a bartender in New Jersey; that he ceased his employment since he learned that he was ineligible, and that he has been unemployed since the early part of May 1947. Under the circumstances I shall accept as true petitioner's sworn testimony that he believed he was eligible to be employed as a bartender in this State.

It appearing from the testimony herein that petitioner has been law-abiding for at least five years last past and that his association with the alcoholic beverage industry will not be contrary to public interest,

It is, on this 9th day of July, 1947,

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

ERWIN B. HOCK
Commissioner.

2. APPELLATE DECISIONS - SHAW v. ROCKAWAY.

NORMAN SHAW,)
Appellant,)

-vs-

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF ROCKAWAY,)
Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

Shuback and Orr, Esqs., by Harry A. Shuback, Esq., Attorneys for Appellant.
Frank C. Scerbo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the action of respondent in denying appellant's application for a plenary retail consumption license for premises on Rockaway-Green Pond Road, Marcella, Rockaway Township, known as Circle S Ranch.

Appellant's application was filed on December 10, 1946. On December 30, 1946, an ordinance was adopted limiting the number of plenary retail consumption licenses to be issued at 17, there then being outstanding 18 such licenses. On February 13, 1947, appellant's application was denied. According to the 1940 Federal Census, the population of Rockaway Township was 2,423.

Appellant's sole meritorious contention is that there was no limitation precluding the granting of his application at the time of the filing thereof. However, the fact that the limitation was adopted subsequently to the denial of the application cannot avail the appellant since the question herein is whether the license should now be granted. Price v. East Rutherford, Bulletin 754, Item 8, and cases cited therein. Cf. DePadova v. Little Falls, Bulletin 770, Item 9. Since the ordinance presently precludes the issuance of the license, respondent's action in denying the application must be affirmed.

The other grounds of appeal, viz., respondent's failure to serve appellant with notice of reasons for denial, the lack of any objection filed with respondent and appellant's "right" to a license "as a matter of law" are immaterial in view of the determination herein made as to the effect of the limitation ordinance. Appellant is reminded, however, that no one is entitled to a liquor license as a matter of right since it is a special privilege granted to the few and denied to the many. Bunball v. Burnett, 115 N.J.L. 254.

For the foregoing reasons the action of the respondent in denying appellant's application for license is affirmed.

Accordingly, it is, on this 8th day of July, 1947,

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

ERWIN B. HOCK
Commissioner.

3. APPELLATE DECISIONS - McDUFFY ET ALS. v. MORRIS TOWNSHIP AND MARTIN.

HARRY McDUFFY, KATHERINE MEZZANOTTO,
ANNE COOK, ALICE LACEY, GEORGE
TANNER, and ROBERT GREGORY,)

Appellants,)

-vs-

ON APPEAL

CONCLUSIONS AND ORDER

TOWNSHIP COMMITTEE OF THE TOWNSHIP
OF MORRIS, and ISAAC MARTIN,)
trading as POST WAR CLUB,)

Respondents)

Jacob S. Kasdin, Esq., Attorney for Appellants.
Elden Mills, Esq., Attorney for Respondent Township Committee.
David Young 3rd, Esq., Attorney for Respondent Isaac Martin.

BY THE COMMISSIONER:

This appeal is from the issuance of a plenary retail consumption license to respondent Martin for premises at 249 Evergreen Avenue, Morris Township.

The reasons urged for reversal of the issuance are: (1) that the issuance is contrary to the Township's ordinance; (2) that the issuance is forbidden by a state law; and (3) that the premises are in a residential area where operation of a tavern would interfere with the residents' enjoyment and use of their dwellings.

Reason (1) is without merit for there is no evidence of the adoption of any numerical limitation ordinance in the township.

As to Reason (2), the reference is to the 1946 State Limitation Law (Chapter 147 of the Laws of 1946, effective April 24, 1946, which law was declared null and void by the State Supreme Court (Re Kornbluh and Temel, 134 N.J.L. 529; Bulletin 734, Item 9). A 1947 State Limitation Law (Chapter 94 of the Laws of 1947) became effective May 15, 1947. The license issuance herein appealed from was long before the present statute's effective date, and thus is not prohibited by the statute. Reason (2) is without merit.

Respondent Martin first filed application for a license for premises in the rear of 249 Evergreen Avenue. Objections were filed and respondent Committee denied the application on the ground that the proposed location was not a proper one inasmuch as it was in the rear of the lot and "would not be open to clear police supervision"; but that the Committee "would give consideration to the license if the place in question were in the front of the lot or in some other place." Respondent Martin's application for a license (herein appealed from) for premises located at the front of 249 Evergreen Avenue was granted July 8, 1946, no one having appeared in opposition.

With respect to Reason (3): If the vicinity were strictly residential in character, the appellants' contention on this point would be well taken. (O'Rourke v. Fort Lee, Bulletin 189, Item 14.) It appears from the evidence, however, that the vicinity is in fact mixed residential and business; and where a vicinity is of such mixed character it is within the local issuing authority's sound discretion to determine whether an alcoholic beverage license should be permitted there. (Jones v. Camden, Bulletin 121, Item 4; McDonald v. Paterson, Bulletin 155, Item 10; Ciliberti v. Camden, Bulletin 379, Item 13.)

Since the opening of respondent Martin's tavern no complaints have been made to the local police or to the State Department concerning its operation. At the appeal hearing, two appellants claimed occasional annoyance, principally on Sunday, due to noise made by the tavern customers. Respondent Martin denied any undue noise. While the record in this particular matter falls short of justifying a reversal in this appeal, it is pointed out that respondent Martin should continue to bear well in mind that a licensee whose premises are located near residential properties is under a strict duty to see that the operation of his business does not cause any undue disturbance and does not interfere with the proper enjoyment of neighboring property.

From the evidence herein, I cannot find that the respondent Committee abused its discretionary authority.

Accordingly, it is, on this 8th day of July, 1947,

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

ERWIN B. HOCK
Commissioner.

4. DISCIPLINARY PROCEEDINGS - PURCHASE OF ALCOHOLIC BEVERAGE BY RETAILER OTHER THAN FROM NEW JERSEY MANUFACTURER OR WHOLESALER IN VIOLATION OF RULE 15 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

LINWOOD LODGE GUN AND ROD CLUB)
Sadler Avenue)
Lawnside, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Club License CB-1 for the)
fiscal year 1946-47 and now holder)
of Club License CB-2 for the fiscal)
year 1947-48, both issued by the)
Borough Council of the Borough of)
Lawnside.)
-----)

Louis L. Goldman, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

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

"1. On or about March 17, 1947 you, a New Jersey retail licensee, without authority of special permit, purchased alcoholic beverages from a person who was not the holder of the New Jersey manufacturer's or wholesaler's license, in that you purchased from John W. Wilson, a non-licensee, one case of twelve 4/5 quart bottles of assorted Imperial, Calvert, Carstairs and Four Roses whiskies, which alcoholic beverages had been stolen; such purchase being in violation of Rule 15 of State Regulations No. 20.

"2. On the aforesaid date and for several days thereafter, you possessed and had custody of illicit alcoholic beverages in that during such time you kept and stored on your licensed premises, the aforesaid twelve bottles of whiskies, all such alcoholic beverages being illicit under R. S. 33:1-1(i) since they had been transported in this State by and purchased from a person not licensed to transport or sell alcoholic beverages; your possession and custody of said alcoholic beverages being in violation of R. S. 33:1-50."

The investigation in the instant case discloses that twelve 4/5 quarts of whiskey were purchased by a representative of the defendant-licensee from a person who had previous thereto stolen or misappropriated same from his employer. Percy Branch, president of defendant club, denies that he had participated in the purchase of the liquor in question. However, the person who had made the sale identified Branch as the one who had purchased the whiskey from him. I am satisfied that the deal was consummated as described by the person who made the sale of the liquor.

Defendant-licensee has no previous adjudicated record. I shall, therefore, suspend its license for a period of sixty days, less five days' remission for the plea entered herein, or a net suspension of fifty-five days. Cf. Re Bovino, Bulletin 678, Item 15.

Although this proceeding was instituted during the licensing year 1946-47, it does not abate but remains fully effective against the renewal license for the 1947-48 fiscal year. State Regulations No. 16.

Accordingly, it is, on this 7th day of July, 1947,

ORDERED that Club License CB-2, issued for the 1947-48 licensing year by the Borough Council of the Borough of Lawnside to Linwood Lodge Gun and Rod Club, for premises on Sadler Avenue, Lawnside, be and the same is hereby suspended for a period of fifty-five (55) days, commencing at 3:00 a.m. July 14, 1947, and terminating at 3:00 a.m. September 7, 1947.

ERWIN B. HOCK
Commissioner.

5. DISCIPLINARY PROCEEDINGS - GAMBLING AND BOOKMAKING - ALLOWING PREMISES TO BE USED IN CONNECTION WITH ILLEGAL ACTIVITY - PREVIOUS WARNING - LICENSE SUSPENDED FOR 90 DAYS.

In the Matter of Disciplinary Proceedings against)

VICTORIA KLOSTERMAN)
T/a CLUB CADIX)
1050 Mechanic Street)
Camden, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-119 for the fiscal year 1946-47 and now holder of License C-201 for the current fiscal year, both issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)
-----)

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

BY THE COMMISSIONER:

Defendant pleads non vult to the following charges:

"1. On or about May 10, 1947, and on divers dates prior thereto, you allowed, permitted and suffered on or about your licensed premises devices and apparatus designed for the purpose of bookmaking and gambling, to wit, a dice table and bookmaking paraphernalia; in violation of Rule 7 of State Regulations No. 20.

"2. On or about May 10, 1947, and on divers dates prior thereto, you allowed, permitted and suffered your licensed premises and your licensed business to be used in furtherance and aid of and in connection with an illegal activity or enterprise, to wit, bookmaking and horse race betting conducted in a room above your licensed premises connected therewith by a stairway; in violation of Rule 4 of State Regulations No. 20."

The investigation in the within case discloses that on May 10, 1947, two ABC agents, accompanied by two investigators of the Office of the Attorney General of New Jersey, visited the licensed premises in question. Various racing and gambling paraphernalia were found in the barroom and in a room above the licensed premises, connected thereto by a stairway, equipment was installed for use in connection with bookmaking and horse racing.

Defendant-licensee, at an informal hearing held on Monday, May 22, 1944, was apprised of the fact that her licensed premises had been under surveillance of the Department of Alcoholic Beverage Control when certain evidence had come to light indicating that gambling activities were being conducted in an adjoining room which had been listed as part of the licensed premises. A warning was given by the State Commissioner and defendant gave her solemn assurance that no gambling activities of any sort would be countenanced by her on the licensed premises in the future.

The evidence herein indicates that both the licensee and the licensed premises were involved in a rather large scale gambling operation. This following an express warning previously given to the licensee by the State Commissioner constitutes severe aggravation. Under all of the circumstances and considering the plea

entered herein, I shall suspend the defendant's license for a period of ninety days. Any further violation of this nature may very well result in outright revocation.

Although this proceeding was instituted during the licensing year 1946-47, it does not abate but remains fully effective against the renewal license for the 1947-48 fiscal year. State Regulations No. 16.

Accordingly, it is, on this 7th day of July, 1947,

ORDERED that Plenary Retail Consumption License C-201, issued for the 1947-48 licensing year by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Victoria Klosterman, t/a Club Cadix, for premises 1050 Mechanic Street, Camden, be and the same is hereby suspended for a period of ninety (90) days, commencing at 2:00 a.m. July 17, 1947, and terminating at 2:00 a.m. October 15, 1947.

ERWIN B. HOCK
Commissioner.

6. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - AGGRAVATED CIRCUMSTANCES - PRIOR RECORD - LICENSE SUSPENDED FOR 80 DAYS.

In the Matter of Disciplinary Proceedings against)

RAYMOND L. POWERS)
T/a ESSEX CAFE)
17 South Essex Street)
Dover, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-22 for the licensing years 1946-47 and 1947-48, issued by the Board of Aldermen of the Town of Dover.)
-----)

Sidney Simandl, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esc., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to charges alleging that he sold, served and delivered alcoholic beverages to minors, and permitted them to consume alcoholic beverages on his licensed premises, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The premises of this defendant is the first of five licensed establishments visited by a group of youngsters on the night of Friday, January 24, 1947, and the early hours of the next morning. See Bulletin 771, Items 7, 8, 9 and 10.

There are five minors involved in this case. Two of them, each nineteen years old, were served about seven or eight glasses of beer. The three other minors are each sixteen years of age. Two of the latter, after consuming several glasses of beer, left the premises about 9:00 p.m., purchased a pint bottle of whiskey at another place, and then returned to the defendant's tavern, where they finished the bottle of whiskey and each drank many more glasses of beer. The third sixteen-year-old minor was served and consumed one glass of beer.

The consequences of serving such youngsters is starkly exemplified by this case. After leaving the defendant's premises, where they were permitted to drink a considerable quantity of alcoholic beverages, two of them committed a robbery after breaking into a lunchroom.

This is the defendant's second offense for selling to minors. In August 1943 his license was suspended for a net period of twenty-five days and, in addition, the defendant pleaded guilty to a criminal charge of selling to a minor and was fined the sum of \$100.00. See Bulletin 597, Item 1.

It would seem superfluous to state that a substantial penalty must be imposed for the instant violation, considering the number of minors concerned, their ages, the amount of alcoholic beverages served to them, and also the previous record of a similar offense. In view of all of the circumstances, including the plea, a suspension for a period of 80 days will be imposed.

Accordingly, it is, on this 11th day of July, 1947,

ORDERED that Plenary Retail Consumption License C-22, issued for the 1947-48 licensing year by the Board of Aldermen of the Town of Dover to Raymond L. Powers, t/a Essex Cafe, for premises 17 South Essex Street, Dover, be and the same is hereby suspended for eighty (80) days, commencing at 1:00 a.m. July 21, 1947, and terminating at 1:00 a.m. October 9, 1947.

ERWIN B. HOCK
Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - AGGRAVATED CIRCUMSTANCES - PRIOR RECORD - LICENSE SUSPENDED FOR SIXTY DAYS.

In the Matter of Disciplinary Proceedings against)

WAYSIDE ENTERPRISES, INC.)
T/a WAYSIDE INN)
26 E. Main St.)
Denville, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-3 for the licensing years 1946-47 and 1947-48, issued by the Township Committee of the Township of Denville.)
-----)

David Young, 3rd, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to charges alleging the sale, service and delivery of alcoholic beverages to minors on its licensed premises, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

For four other related cases, see Bulletin 771, Items 6, 8, 9 and 10.

In this case, two sixteen-year-old boys entered the defendant's premises at about 2:30 a.m. on Saturday, January 25, 1947, after having consumed a considerable quantity of liquor at several other premises. They proceeded to the bar where they placed about \$10.00 in silver on the bar. During their half-hour visit to this tavern, each minor was served and consumed two glasses of brandy, a Tom

Collins, and two glasses of beer. In addition, they purchased two rounds of drinks for all of the other patrons at the bar.

The defendant's previous record includes a thirty-day penalty (less five days for plea) for a similar offense committed in May 1944. See Bulletin 626, Item 4. In that decision, it was pointed out that "the defendant fell far short of meeting its responsibility for strict observance of the law prohibiting the sale of alcoholic beverages to minors."

In view of all of the attendant circumstances, and the plea entered by the defendant, I shall impose a sixty-day penalty for the instant violation.

Accordingly, it is, on this 11th day of July, 1947,

ORDERED that Plenary Retail Consumption License C-3, issued for the 1947-48 licensing year by the Township Committee of the Township of Denville to Wayside Enterprises, Inc., t/a Wayside Inn, for premises 26 E. Main Street, Denville, be and the same is hereby suspended for a period of sixty (60) days, commencing at 3:00 a.m. July 21, 1947, and terminating at 3:00 a.m. September 19, 1947.

ERWIN B. HOCK
Commissioner.

8. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD - LICENSE SUSPENDED FOR 40 DAYS

In the Matter of Disciplinary Proceedings against)

EDWARD KAISER & MICHAEL FEDYN)
T/a DOVER HOTEL TAVERN & LIQUOR)
STORE)
11 South Morris Street)
Dover, N. J.,)

Holder of Plenary Retail Consumption License C-21, issued by the Board of Aldermen of the Town of Dover, and transferred during the pendency of these proceedings to)

EDWARD J. KAISER & G. TAYLOR HUMERICK)
T/a HOTEL TAVERN & LIQUOR STORE)
OF DOVER)

for the same premises.)

CONCLUSIONS
AND
ORDER

John J. Manley, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendants pleaded not guilty to charges alleging that they sold, served and delivered alcoholic beverages to a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

This is one of five related cases resulting from the questioning of several minors by the Dover police officials in connection with a robbery which occurred during the early morning hours of Saturday, January 25, 1947. See Bulletin 771, Items 6, 7, 9 and 10.

The minor involved in this case is sixteen years old. He testified that, at about 9:00 p.m. on Friday, January 24, 1947, he entered the portion of the defendants' premises where package goods are sold, while a companion waited outside for him. He approached the counter and asked the person in charge for a pint of Kinsey whiskey. He was handed the bottle in a paper bag and, after paying for the whiskey, went out and joined his companion.

The latter corroborated the minor's story. He testified that he waited outside the licensed premises and observed the minor in conversation with a man behind the counter. He then saw the man reach for the bottle. When the minor emerged, they went to the local railroad station and there each had several drinks from the bottle.

One of the licensees testified that he and his partner were the only persons who had made any sales of package goods on the night in question, and that he was "pretty positive" that he did not sell any whiskey to the minor, although at 9:00 p.m., when the sale was made, he testified that it was "hard to say" whether he was in the package department and that he "may have gone to the bar". It was stipulated that the testimony of the other licensee would be similar to that of this witness.

The defendants also introduced into evidence a signed statement of the minor taken on the following morning by the Dover police. In this statement, the minor relates all of his activities beginning with Friday, January 24th at 7:00 p.m., until he arrived home some time after 3:00 a.m. of the following morning. In these related events, the minor stated that he had purchased a pint of whiskey at the defendants' premises. At the conclusion of this statement, covering three typewritten pages in question and answer form, appears the following, not apparently in response to any question: "At the completion of this statement (the minor) doubts that he had bought anything to drink in the Town of Dover, N. J."

One of the five police officials who were present during the questioning of the minor testified that he had gotten the minor out of bed at 5:00 a.m., and had taken him to jail, where he was left until another of the boys involved in the robbery was apprehended. The minor was questioned for several hours, and the written statement, which was started at 8:00 a.m., was not completed until at least an hour and a half later. The police officer admitted that the minor's "eyes were red from drinking the night before" and that he was either "tired **** or a little off balance" while being questioned.

The minor contends that he "was bullied" into the concluding statement quoted above. He explained that "I hardly got to bed that night. I didn't have any sleep. I was tired and I was willing to say just about anything to get out of the place."

It should be noted that the minor at no time categorically retracted his unequivocal assertion that he had purchased a pint bottle of whiskey at the defendants' premises. In any event, the one concluding sentence in the statement recited above, when considered in connection with the clear and lucid account of the minor's activities as outlined in the earlier portion of the statement, and the circumstances under which the statement was taken, is not sufficient to overcome the firm testimony given by the minor, and corroborated by his companion, on the witness stand.

I find the defendants guilty as charged.

The penalty normally imposed for a sale to a sixteen-year-old minor is a suspension for a period of twenty days. However, on a similar charge, the license of the defendants was suspended by the

local issuing authority for a ten-day period, less five days for a plea, in June 1946. The penalty in the instant case, therefore, must be doubled, with the result that the license must now stand suspended for a period of forty days.

Accordingly, it is, on this 11th day of July, 1947,

ORDERED that License C- 1, issued by the Board of Aldermen of the Town of Dover to Edward Kaiser and Michael Fedyn, t/a Dover Hotel Tavern & Liquor Store, for premises 11 South Morris Street, Dover, New Jersey, and transferred during the pendency of these proceedings to Edward J. Kaiser & G. Taylor Humerick, t/a Hotel Tavern & Liquor Store of Dover, for the same premises, be and the same is hereby suspended for a period of forty (40) days, commencing at 1:00 a.m. July 21, 1947, and terminating at 1:00 a.m. August 30, 1947.

ERWIN B. HOCK
Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against)

ELMER DANTE)
53 Broadway)
Denville, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-2 for the licensing years 1946-47 and 1947-48, issued by the Township Committee of the Township of Denville.)
-----)

David Young, 3rd, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded not guilty to a charge alleging that he sold, served and delivered alcoholic beverages to a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

Five separate proceedings were instituted as a result of the escapades of several minors on the night of Friday, January 24, 1947, and the early hours of the next morning. In two of these cases, guilty pleas were entered (see Bulletin 771, Items 6 and 7), and in the other two I imposed suspensions after findings of guilt (see Bulletin 771, Items 8 and 10).

In this case, the minor, sixteen years of age, testified that he and a companion were driven to the defendant's premises in a taxicab about 2:00 a.m. on Saturday, January 25, 1947. The driver of the cab corroborated this testimony. Entering the tavern, the minor and his companion proceeded to the bar where the minor was served a glass of beer by one of the two bartenders then on duty. His companion, also a minor, was refused service of any alcoholic beverages and consumed a soft drink. The only difference in the stories told by the minor and his companion is that the former described the soft drink as a birch beer, while the latter stated it was a Coca Cola.

Both bartenders, and the defendant, testified that they did not recall seeing the minors in the licensed premises on the night in question. A waitress gave similar evidence.

After carefully reviewing the entire record, I conclude that the minor visited the tavern as testified to by him and that he was served a glass of beer by one of the defendant's bartenders. The fact that, on a subsequent date, neither he nor his companion were able to identify the bartender who had served them, does not render their positive testimony incapable or unworthy of belief. There is not even a suggestion in the record that any or all of the prosecution's witnesses were improperly motivated into fabricating their testimony out of thin air.

The defendant is guilty as charged.

The previous record of this defendant is entirely free of any adjudicated violations. The extreme immaturity of the minor in this case, however, calls for an increase in the usual ten-day penalty imposed for an unaggravated violation of this kind, to a suspension for a period of twenty days.

Accordingly, it is, on this 11th day of July, 1947,

ORDERED that Plenary Retail Consumption License C-2, issued for the 1947-48 licensing year by the Township Committee of the Township of Denville to Elmer Dante, for premises 53 Broadway, Denville, be and the same is hereby suspended for a period of twenty (20) days, commencing at 3:00 a.m. July 21, 1947, and terminating at 3:00 a.m. August 10, 1947.

ERWIN B. HOCK
Commissioner.

10. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against
ALEXANDER CHVAT
T/a VICTORY BAR & GRILL
East Blackwell Street
Rockaway Township
P.O. Box 597
Succasunna, N. J.,
Holder of Plenary Retail Consumption License C-10 for the licensing years 1946-47 and 1947-48, issued by the Township Committee of the Township of Rockaway.

CONCLUSIONS
AND ORDER

Anthony P. Bianco, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded not guilty to a charge alleging that he sold, served and delivered alcoholic beverages to two minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

This is one of five related cases. For the disposition of the other cases, see Bulletin 771, Items 6, 7, 8 and 9.

The minors involved in this case are each nineteen years of age. It appears from the evidence that, accompanied by four other youths, they entered the defendant's premises shortly before 11:00 p.m. on

Friday, January 24, 1947. One of the minors, Ernest ---, found a seat at the middle of the bar, and the other, Richard ---, went to the end of the bar. Ernest testified that he ordered and was served a glass of beer by one of the two bartenders then on duty. Richard claims that the same bartender also served him a glass of beer. One of their companions testified that he saw the glasses of beer "in front of" the minors, and another testified that he saw each of the minors consume a glass of beer.

In behalf of the defendant, who was not present at the time of the minors' visit to his premises, the bartender and a special police officer were produced as witnesses. Their testimony was directed particularly against Richard and both denied that Richard had been served any beer on the occasion in question. It appears that the bartender and Richard are not on friendly terms because of the former's refusal to serve the latter on a prior occasion. It is quite probable that Richard's recollection of what happened in the defendant's premises is not too clear in view of the fact that he admitted that he was under the influence of liquor when he entered the premises. However, it is unnecessary to determine whether Richard was served with beer on the night in question since I am satisfied that the other minor, Ernest, was served with a glass of beer as charged, and the resultant penalty will be the same whether only one or both of the nineteen-year-old minors are involved in the violation.

The only prior violations appearing in the defendant's record occurred while he held a consumption license in another municipality. In August 1938 his license was suspended for thirty-five days after he was found guilty of selling to minors, employing a minor, and employing a female to tend bar contrary to local regulations. See Bulletin 266, Item 8. In February 1940 he received a twenty-day penalty (less five days upon plea) for again violating the local regulation against females tending bar. See Bulletin 388, Item 12.

Although the instant offense, therefore, constitutes a third violation, the defendant's record is otherwise clear of any adjudicated violations for a period of more than seven years. It should be noted, however, that the initial suspension included a charge of sales to minors. A consideration of all the attendant circumstances leads to the imposition of a twenty-day penalty for the instant violation.

Accordingly, it is, on this 11th day of July, 1947,

ORDERED that Plenary Retail Consumption License C-10, issued for the 1947-48 licensing year by the Township Committee of the Township of Rockaway to Alexander Chvat, t/a Victory Bar & Grill, for premises on East Blackwell Street, Rockaway Township, be and the same is hereby suspended for a period of twenty (20) days, commencing at 1:00 a.m. July 21, 1947, and terminating at 1:00 a.m. August 10, 1947.

ERWIN B. HOCK
Commissioner.

11. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT STILL PARTS AND MOTOR VEHICLE FOUND THEREWITH ORDERED FORFEITED - BUILDINGS IN WHICH STILL PARTS WERE FOUND ORDERED PADLOCKED.

In the Matter of a Seizure on)	Case No. 7118
April 12, 1947 of a still,)	
appurtenant equipment and a Ford)	
sedan, at 8 Oak Street, in the City)	ON HEARING
of Garfield, County of Bergen and)	CONCLUSIONS AND ORDER
State of New Jersey.)	

-----)
 John Witek and Mary Witek, Pro Se.
 Harry Castelbaum, Esq., appearing for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 2 of the Revised Statutes, to determine whether a still, appurtenant equipment and a Ford sedan, described in a schedule attached hereto, seized on April 12, 1947 at 8 Oak Street, Garfield, New Jersey, constitute unlawful property and should be forfeited and, further, to determine whether the premises should be padlocked.

It appears that a Garfield police officer, while in the vicinity of the premises, detected a strong odor of mash. The place was then kept under surveillance and on April 11th, at about 11:00 p.m., Frank DePalma was arrested when he drove into the yard of the premises in the Ford sedan. At the time of the arrest the police also ascertained that there was a still on the premises.

The State Department of Alcoholic Beverage Control was notified of these events and, on April 12th, ABC agents were detailed to seize the still and car.

The still was found in a one-story frame building adjoining a garage erected in the rear of a dwelling on the premises. Entrance to the building housing the still was through an opening which had been made in the wall of the garage. The still equipment included a steam boiler and attached electric oil burner, a quantity of mash and an electric pump.

The owners of the premises are Mary Witek, and her daughter Helen Witek Kowal of Amsterdam, New York. Mary Witek and her husband, both of whom reside in the dwelling on the premises, told the ABC agents that on March 24, 1947 they leased the garage and the attached building to a strange man whose activities, residence and background allegedly remained unknown to them; that DePalma, whose background and activities likewise remained unknown to them, delivered the lease, paid the rent, and was the only person who was active about the premises; and that they furnished the electric current and water supply used in the building where the still was operated. DePalma was arrested in September 1945, and thereafter convicted in criminal proceedings for possessing an unregistered still in a neighboring municipality.

The still was not registered with the State Commissioner of Alcoholic Beverage Control as required by R. S. 33:2-1. Consequently, such still, and the motor vehicle seized therewith on the premises, constitute unlawful property and are subject to forfeiture. In addition, the premises are subject to padlocking. R. S. 33:2-5.

When the matter came on for hearing pursuant to R.S. 33:2-4, John Witek and Mary Witek appeared and sought to avoid padlocking of the premises, but indicated that their major concern was to prevent padlocking of the dwelling. Neither the Witeks nor anyone else appeared to oppose forfeiture of the seized property.

It is evident that, even if the Witek's actually entered into the lease in good faith, they failed to take any reasonable precautions to determine the character or identity of the tenant. Under such circumstances, the padlocking penalty will be imposed to the extent that I deem, in my discretion, to be appropriate. See Seizure Case 7106, Bulletin 766, Item 3.

The dwelling is the home of Mr. and Mrs. Witek and their three children. He is a carpenter by trade and testified that neither he nor his wife have ever been convicted of any crime. There is nothing to indicate that the Witek's personally participated in the operation of the still. They are in meager financial circumstances. Seemingly, it would be an undue hardship to compel them to vacate their family home, especially in view of the current housing shortage. Padlocking will therefore be limited to the garages and the attached building.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and the same be and hereby is 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 State Commissioner of Alcoholic Beverage Control; and it is further

ORDERED, that the garages and the attached one-story frame building in the rear of premises known and designated as No. 8 Oak Street, in the City of Garfield, County of Bergen and State of New Jersey, being the buildings in which the still was seized, shall not be used or occupied for any purpose whatsoever, for a period of six months, commencing the 11th day of August, 1947.

Dated: July 8, 1947.

ERWIN B. HOCK
Commissioner.

SCHEDULE "A"

- 18 - 50-gallon drums
- 4 - galvanized tanks
- 300 - gallons mash
- 1 - copper cooker
- 1 - copper column
- 1 - galvanized cooler with copper coils
- 1 - copper gooseneck
- 1 - Century Electric Pump 1/2 h.p., Serial No. 463686
- 1 - funnel
- About 35 lbs. of yeast compound
- 1 - Thatcher boiler
- 1 - Oil burner and General Electric ignition transformer CAT 56G71C4660
- 1 - 5-gallon copper cooler and gooseneck
- 1 - copper cooler
- 1 - Ford sedan, Engine No. 40-6049(B)-40-6050, 1947 N. J. Registration, License YA 18 S
- Miscellaneous pipes and fittings

12. STATE LICENSES - NEW APPLICATIONS FILED.

Erven Lucas Bols, Incorporated
362-400 South Dean St., Englewood, N. J.
Application for Rectifier and Blender License filed July 10, 1947.

Carolina Beverage Co.
109-111 N. South Carolina Ave., Atlantic City, N. J.
Application for Limited Wholesale License filed July 14, 1947.

Frank Dandrea and Carmine Coccaro, t/a Landisville Beverage Co.
Flower St. & Harding Highway, Buena Vista Township, Landisville, N.J.
Application for State Beverage Distributor's License filed
July 14, 1947.

Mid-States Freight Lines, Inc.
311 Mt. Pleasant Ave., Newark, N. J.
Application for Transportation License filed July 14, 1947.

James O'Driscoll
Foot of Commercial St., Newark, N. J.
Application for Plenary Retail Transit License filed July 14, 1947.

ERWIN B. HOCK
Commissioner.

13. APPELLATE DECISIONS - SUSSEX COUNTY TAVERN ASSOCIATION v. HAMPTON TOWNSHIP ET ALS. - ORDER OF DISCONTINUANCE.

SUSSEX COUNTY TAVERN ASSOCIATION,)
Appellant,)
-vs-)
TOWNSHIP COMMITTEE OF THE TOWNSHIP)
OF HAMPTON, and JOSEPH TRINCA,)
trading as VILLA TRINCA,)
Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

-----)
William C. Egan, Esq., Attorney for Appellant.
Lewis Van Blarcom, Esq., Attorney for Respondent Township Committee.
Mackerley and Friedman, Esqs., by Peter Friedman, Esq., Attorneys
for Respondent Joseph Trinca.

BY THE COMMISSIONER:

This is an appeal from the issuance of a plenary retail consumption license to respondent, Joseph Trinca, for the 1946-47 licensing period for premises known as Villa Trinca, situate at Swartswood-Branchville Road in the Township of Hampton, Sussex County.

Subsequent to the filing of the instant appeal, respondent, Joseph Trinca, indicated that he will not make application for renewal of said license for the premises in question for the 1947-48 licensing period.

The license which is the subject of this appeal has expired. The parties, through their respective attorneys, have agreed by formal stipulation that the appeal be withdrawn. No cause appearing to the contrary,

It is, on this 14th day of July, 1947,

ORDERED that the within appeal be and the same is hereby discontinued.