

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

BULLETIN 500 MARCH 26, 1942

1. MANUFACTURERS AND WHOLESALERS - FILING CREDIT INFORMATION -  
REGULATIONS NO. 36 PROMULGATED - INSTRUCTIONS AND FORMS.  
HEREIN OF CREDIT REGULATION.

TO ALL MEMBERS OF THE ALCOHOLIC BEVERAGE INDUSTRY HOLDING NEW  
JERSEY MANUFACTURERS' OR WHOLESALERS' LICENSES:

CREDIT EXTENSION AND BACK DEBTS - INTRODUCTORY STATEMENT.

For several years, the subject of credit within the alcoholic beverage industry in New Jersey was brought before the State Legislature and the Department of Alcoholic Beverage Control. The late Commissioner Burnett opposed credit regulation repeatedly - at times emphatically - on two main grounds. He was fearful of turning the Department into a "collection agency"; and he was clearly mindful of the potentially great burden upon the general administration and enforcement activities of the Department.

Now, credit regulation is newly urged and newly resisted by various groups within the industry. After careful consideration of the numerous proposals and arguments advanced, and with a mind to the whole broad problem, my feelings are these: I am impressed by the late Commissioner's reasons for disapproving the suggested regulations. I feel that those who ask the Legislature or this Department to take action against "excessive" credit are themselves largely responsible for existing credit and debt conditions. At the same time, in fairness to all concerned, and particularly in the public good and the best interest of all branches of the industry, it may be necessary that this Department assume a further responsibility by taking appropriate action toward credit regulation.

But control measures affecting debts and credits are so far-reaching in their implications that it is dangerous to attempt them unless the facts are known. The plain truth is that this Department has no adequate information covering the credit situation in the State. The data made available through conferences and various communications is piecemeal and in no way sufficient to serve as the basis for intelligent regulations. Among interested groups there is wide divergence as to the meaning of the term "excessive credit", and in reasons for desiring or decrying credit restrictions. The experiences of states which have tried credit regulation are useful but New Jersey, like every other state, has its own peculiar characteristics.

I propose, therefore, to require by Regulations, that lists shall be filed with this Department by all New Jersey manufacturer and wholesaler licensees showing recent credit extensions to, and back indebtedness of, New Jersey retailers and wholesalers. Those who urge governmental intervention should be ready and anxious to cooperate in furnishing this Department with full and precise details so that if Regulations are made they may be adapted to actual facts and conditions in New Jersey.

It is realized that reports containing specific names and amounts of payment due must be confidential. All persons concerned, therefore, are assured that lists filed pursuant to the appended Regulations will not be matters of public record but will be received and kept by this Department in strict confidence. Should amounts unpaid by particular licensees be divulged by an employee of the Department, I hereby pledge that the steps taken will be swift and appropriate.

REGULATIONS NO. 36 - REQUIRING REPORTS ON  
CREDIT EXTENSION AND BACK DEBTS.

1. As used in Regulations No. 36, the term "manufacturer or wholesaler" means the holder of any of the following New Jersey licenses: Plenary brewery, limited brewery, plenary winery, limited winery, plenary distillery, limited distillery, supplementary limited distillery, rectifier and blender, plenary wholesale, limited wholesale, wine wholesale, state beverage distributor's, plenary export wholesale, and limited export wholesale.

"Alcoholic beverages" includes malt alcoholic beverages.

2. On or before April 15, 1942, each manufacturer or wholesaler engaged in the sale in New Jersey of alcoholic beverages to New Jersey retail licensees, shall file with the State Commissioner of Alcoholic Beverage Control a list, under oath and in a form prescribed by the Commissioner, containing the name and address of each such retail licensee to whom the manufacturer or wholesaler has sold and delivered alcoholic beverages, and setting forth:

- (a) The total amount unpaid by the retail licensee on or before December 31, 1940, for deliveries made at any time prior to January 1, 1941.
- (b) The total amount of deliveries to the retail licensee during the calendar year 1941.
- (c) The total amount unpaid by the licensee on or before December 31, 1941, for all deliveries made at any time prior to January 1, 1942.
- (d) The total amount of deliveries to the licensee during the month of January 1942.
- (e) The total amount unpaid by the licensee on or before February 15, 1942 for deliveries made during the month of January 1942.
- (f) The total amount unpaid by the licensee on or before February 28, 1942 for deliveries made during the month of January 1942.

3. On or before April 15, 1942, each manufacturer or wholesaler engaged in the sale in New Jersey of alcoholic beverages to New Jersey wholesale licensees shall file with the State Commissioner of Alcoholic Beverage Control a list, under oath and in a form prescribed by the Commissioner, containing the name and address of each such wholesale licensee to whom the manufacturer or wholesaler has sold and delivered alcoholic beverages, and setting forth:

- (a) The total amount unpaid by the wholesale licensee on or before December 31, 1940, for deliveries made at any time prior to January 1, 1941.
- (b) The total amount of deliveries to the wholesale licensee during the calendar year 1941.
- (c) The total amount unpaid by the licensee on or before December 31, 1941, for all deliveries made at any time prior to January 1, 1942.
- (d) The total amount of deliveries to the licensee during the month of January 1942.
- (e) The total amount unpaid by the licensee on or before February 15, 1942 for deliveries made during the month of January 1942.
- (f) The total amount unpaid by the licensee on or before February 28, 1942 for deliveries made during the month of January 1942.

4. Violation of any of the foregoing rules shall subject the license of the manufacturer or wholesaler to suspension.

The foregoing rules are hereby promulgated, effective immediately.

ALFRED E. DRISCOLL,  
Commissioner.

Dated: March 18, 1942.

REGULATIONS NO. 36 - IMPORTANT INSTRUCTIONS.

1. Enclosed are forms in which reports pursuant to State Regulations No. 36 are to be made by New Jersey licensed manufacturers and wholesalers. THE REPORTS MUST BE FILED WITH THIS DEPARTMENT ON OR BEFORE APRIL 15, 1942.

2. Form 3950 must be filed by every licensed New Jersey manufacturer or wholesaler of alcoholic beverages, including malt alcoholic beverages, engaged in the sale of alcoholic beverages to New Jersey retail licensees. IT COVERS ONLY DELIVERIES TO, AND BALANCES UNPAID BY, NEW JERSEY RETAIL LICENSEES.

3. Form 3960 must be filed by every licensed New Jersey manufacturer or wholesaler of alcoholic beverages, including malt alcoholic beverages, engaged in the sale of alcoholic beverages to New Jersey wholesale licensees. IT COVERS ONLY DELIVERIES TO, AND BALANCES UNPAID BY, NEW JERSEY WHOLESALE LICENSEES.

4. Forms 3950 and 3960 must be signed and sworn to by the licensee making the report. Reports by corporate licensees must be signed and sworn to by the President or a Vice-President of the corporation.

5. Form 3950 shall contain only the names and amounts for those who are New Jersey licensed retailers at the time Form 3950 is filed with this Department. More specifically, it shall not include former retailers who do not hold a New Jersey retail license at the time of filing, EXCEPT a retail business being operated by a receiver, trustee, executor, or administrator. In the latter cases, the names and amounts shall be included in the listing. Similarly in Form 3960, the list shall not include former wholesalers who do not hold a New Jersey wholesale license at the time of filing, EXCEPT a wholesale business being operated by a receiver, trustee, executor or administrator.

6. "AMOUNTS" of sales and deliveries, and balances unpaid are to be amounts in dollars and cents and not in barrels, cases, bottles, etc. "AMOUNTS" are to be those indicated on the books of the vendor filing the list, and regardless of pending litigation or other dispute as to quantity, quality, amount due or fact of payment.

7. If those filing Forms 3950 and 3960 have by assignment or otherwise relinquished all legal claim to amounts unpaid, such amounts shall be omitted in computing the totals to be listed. But notes taken by those filing shall be included to the extent that such notes were outstanding and unpaid at the end of the period covered in the particular column.

8. Any alcoholic beverages returned to the vendor shall NOT be included. The credit or other adjustment on goods returned during the period covered shall be deducted in computing listed amounts.

9. Forms 3950 and 3960 must be TYPEWRITTEN.

The names of licensees listed must be in ALPHABETICAL ORDER.

The name of each licensee on the list must be listed as it appears on the license certificate, except that the last name shall be placed first for purposes of alphabetical order of listings. If, however, a trade name appears on the license certificate, it shall be listed first and shall be followed by the name of the person, association, firm or corporation to whom the license is issued.

A limited number of the Forms are enclosed. ADDITIONAL PAGES necessary for completion of the required listing MUST BE IN THE FORM PRESCRIBED AND OF THE SAME 8½" x 14" IN SIZE; but paper of a different grade, texture or color may be used.

ALFRED E. DRISCOLL,  
Commissioner.

Dated: March 18, 1942.

DO NOT FOLD

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

Report of Manufacturer or Wholesaler of Alcoholic Beverages, including Malt Alcoholic Beverages,  
 Pursuant to State Regulations No. 36.

1. Name of licensee filing the Report: \_\_\_\_\_
2. Address of licensee: \_\_\_\_\_
3. New Jersey license number: \_\_\_\_\_

4. Retail Licensee  (Here typewritten, alphabetical list of retail licen- sees)	Address	(a) Total Amount Unpaid by 12/31/40 For All Deliveries Made Before 1/1/41	(b) Total Deliveries Made During Calendar Year 1941	(c) Total Amount Unpaid by 12/31/41 For All Deliveries Made Before 1/1/42	(d) Total Deliveries Made During January 1942	(e) Total Amount Unpaid by 2/15/42 For Deliveries Made During January 1942	(f) Total Amount Unpaid by 2/28/42 For Deliveries Made During January 1942

NOTE: Form 3960 is identical with 3950, except that it is to contain listing of licensed Wholesalers.

2. DISCIPLINARY PROCEEDINGS - PERMITTING MINOR, HOLDER OF EMPLOYMENT PERMIT, TO SELL ALCOHOLIC BEVERAGES IN VIOLATION OF RULE 3 OF STATE REGULATIONS NO. 11 - 5 DAYS' SUSPENSION, LESS 2 FOR GUILTY PLEA.

DISCIPLINARY PROCEEDINGS - SALE AND SERVICE BY MINOR PERMITTEE CONTRARY TO CONDITIONS OF EMPLOYMENT PERMIT - 30 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against )

MRS. ANNA HOCHHEISER, )  
19 Main Street, )  
Lodi, N. J., )

Holder of Plenary Retail Distribution License D-1, issued by the Mayor and Council of the Borough of Lodi, )

-and-

JEROME HOCHHEISER, )  
19 Main Street, )  
Lodi, N. J., )

Holder of Employment Permit No. 323, issued by the State Commissioner of Alcoholic Beverage Control. )  
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CONCLUSIONS AND ORDER

Mrs. Anna Hochheiser }  
Jerome Hochheiser } Pro Se.

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

BY THE COMMISSIONER:

The defendant-licensee has pleaded guilty to a charge of permitting her employee, Jerome Hochheiser, a minor, who holds an employment permit for a person disqualified by reason of age, to sell alcoholic beverages, in violation of Rule 3 of State Regulations No. 11. The defendant-permittee has pleaded guilty to a charge of selling and serving alcoholic beverages contrary to the condition upon which his employment permit was issued. Both proceedings will be treated and disposed of herein since they arise out of the same transaction.

It appears that, on November 14, 1941, while making a routine inspection at the licensed premises, investigators observed Jerome Hochheiser, son of the licensee, make a sale of a bottle of wine to a customer. This sale is admitted by the licensee and permittee. Both, however, state that they were under the impression that the permit authorized the sale of liquor by the permittee, despite the fact that the permit itself is expressly conditioned that if its holder "does not qualify as to.....age....such permittee shall not in any manner whatsoever serve, sell or solicit the sale....of any alcoholic beverages."

Ignorance of the law or regulations presents no defense.  
Re Stein, Bulletin 458, Item 3; Re Broodwinner, Bulletin 477, Item 3.

Since no previous record appears against either licensee or permittee, the usual 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. Re Stein, supra.

Accordingly, it is, on this 11th day of March, 1942,

ORDERED, that Plenary Retail Distribution License D-1, heretofore issued to Mrs. Anna Hochheiser for premises 19 Main Street, Lodi, by the Mayor and Council of the Borough of Lodi, be and the same is hereby suspended for a period of three (3) days, commencing March 16, 1942, at 3:00 A.M. and concluding March 19, 1942, at 3:00 A.M.; and it is further

ORDERED, that Employment Permit No. 323, heretofore issued to Jerome Hochheiser by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for a period of twenty-five (25) days, commencing March 16, 1942, at 3:00 A.M. and concluding April 10, 1942, at 3:00 A.M.

ALFRED E. DRISCOLL,  
Commissioner.

3. DISCIPLINARY PROCEEDINGS - POSTING OF MISLEADING SIGNS DURING PERIOD OF SUSPENSION, CALCULATED TO DECEIVE THE PUBLIC, IS PROHIBITED - SUCH SIGNS ARE IN CONTEMPT OF THE ORDER OF SUSPENSION.

March 13, 1942

Anthony Bufis,  
T/a Cafe Paradise,  
Secaucus, N. J.

Dear Sir:

I have investigator's report that on March 9th you displayed in the window of your licensed premises a cardboard sign approximately 30" x 20", with the hand printed inscription "Closed, being altered."

The fact of the matter is that your premises were not closed for alterations but were closed because your license was suspended by the Secaucus Town Council for ninety days commencing March 1st. This misleading sign is wholly improper and in open contempt of the authority of the Secaucus Town Council and this Department.

I understand that you claimed to have posted the sign in good faith and that, had you known it was not permitted, you would not have posted it since you were in enough trouble already. Very well -- I shall therefore give you an opportunity to purge your contempt.

You are directed to prepare a new sign of the same size, stating the real reason for the closing of the premises, viz., "License suspended for ninety days for refilling whiskey bottles, employing hostesses and selling during prohibited hours", the letters of the sign to be not less than two inches high and of proportionate width.

You are further directed to display said sign in the show window of your licensed premises in the same position in which your false and misleading sign was displayed and to maintain it until further notice.

Very truly yours,  
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 - LICENSE REVOKED.

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

In the Matter of Disciplinary Proceedings against  
PETER ZABRYCKI (ZABYSKI)  
Allentown-Hightstown Road  
Upper Freehold Township  
P.O. Allentown, R.D., N. J.,  
Holder of Plenary Retail Consumption License C-2 for the year 1940-41 issued by the Township Committee of Upper Freehold Township.

In the Matter of Disciplinary Proceedings against  
MAX KLIMENKO  
Hightstown & Allentown Road  
New Canton, N. J.,  
Holder of Employment Permit No. 44 issued by the State Commissioner of Alcoholic Beverage Control.

In the Matter of Disciplinary Proceedings against  
FANNIE KLIMENKO  
Hightstown & Allentown Road  
New Canton, N. J.,  
Holder of Employment Permit No. 36 issued by the State Commissioner of Alcoholic Beverage Control.

CONCLUSIONS  
AND ORDER

Peter Zabrycki, Pro Se.  
Felcone & Felcone, Esqs., by Joseph Felcone, Esq., Attorney for Max Klimenko and Fannie Klimenko.  
Abraham Merin, Esq., Attorney for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

These cases being inter-related are being decided together.

The licensee, Peter Zabrycki, has pleaded guilty to charges (1) that in his application for license dated July 6, 1940, filed

with the Township Committee of Upper Freehold Township, he failed to disclose that Max Klimenko and Fannie Klimenko had an interest in the license applied for, in violation of R. S. 33:1-25; and (2) that he knowingly aided and abetted Max Klimenko and Fannie Klimenko, who were non-licensees, to exercise the rights and privileges of his license contrary to R. S. 33:1-26, in violation of R. S. 33:1-52.

Max Klimenko and Fannie Klimenko have similarly pleaded guilty to charges that (1) in their application for employment permits filed with this Department, they failed to disclose their interest in the above tavern, in violation of R. S. 33:1-25, and (2) that they, not being licensees, exercised the rights and privileges of the license held by Peter Zabrycki, in violation of R. S. 33:1-26.

The facts are clear. It appears that in June 1940 Max and Fannie Klimenko, who were disqualified from holding a liquor license in New Jersey because of their lack of sufficient residence in this State, induced Peter Zabrycki, a friend of theirs, to take out in his name a liquor license for this tavern as a "front" for them. The Klimenkos then obtained employment permits from this Department on the false representation that they were employees there.

As to penalty: These proceedings were instituted against Plenary Retail Consumption License C-2 issued to Peter Zabrycki for the fiscal period 1940-41, expiring June 30, 1941. This license was not renewed nor, according to departmental records, does Zabrycki hold any liquor license in New Jersey at the present time. The expiration of the license, however, does not bar or abate disciplinary proceedings. Regulations No. 15. Despite such expiration, the license will be revoked. This will result in a two-year mandatory disqualification against Zabrycki holding or receiving another liquor license in this State. R. S. 33:1-31. Cf. Re Capelli, Bulletin 482, Item 6.

Max and Fannie Klimenko hold employment permits for the 1941-42 period issued by this Department authorizing their employment notwithstanding their non-residence. Where, as here, the permittees have abused that privilege by holding a prohibited interest in a retail license, their permits will be revoked outright.

Accordingly, it is, on this 12th day of March, 1942,

ORDERED, that Employment Permit No. 44, heretofore issued to Max Klimenko, and Employment Permit No. 36, heretofore issued to Fannie Klimenko by the State Commissioner of Alcoholic Beverage Control, be and the same are hereby revoked, effective immediately; and

It is further ORDERED, that Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Upper Freehold to Peter Zabrycki for premises located on the Allentown-Hightstown Road, Upper Freehold Township, for the fiscal year 1940-41, be and the same is hereby revoked.

ALFRED E. DRISCOLL,  
Commissioner.

- 5. SKEE BALL - NOT IN VIOLATION OF STATE REGULATIONS NO. 20, RULE 7, IF USED SOLELY FOR SKILL AND AMUSEMENT, PROVIDED THEY ARE NOT PLAYED AGAINST THE HOUSE - MUST CONTAIN NO MECHANISM WHICH AWARDS PLAYERS FREE GAMES.

March 17, 1942

Andrew J. Farrell,  
T/a Sport Center Tavern,  
Cresskill, N. J.

My dear Mr. Farrell:

I have before me your letter of March 12th inquiring whether Rule 7 of State Regulations No. 20, as amended to prohibit bagatelle and pin ball machines on licensed premises, also prohibits the maintenance of a "Bank Roll" machine.

From your description, the Bank Roll machine appears to be nothing more than a variation of the familiar Skee Ball, which I remember as a miniature bowling alley with a device to register the score obtained by the player.

Skee Ball machines were ruled to be permissible on licensed premises so long as they were used solely for skill and amusement. See Re Benson, Bulletin 161, Item 8.

Skee Ball machines and their counterpart, the Bank Roll machine, are still permissible on licensed premises so long as they contain no mechanism which awards the player free games.

Very truly yours,  
ALFRED E. DRISCOLL,  
Commissioner.

- 6. MORAL TURPITUDE - COMMERCIALIZED GAMBLING MAY OR MAY NOT INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - APPLICANT FOUND NOT TO HAVE BEEN DISQUALIFIED.

In the Matter of an Application )  
to Remove Disqualification be- )  
cause of a Conviction, Pursuant ) ON HEARING  
to R. S. 33:1-31.2. ) CONCLUSIONS AND ORDER.

Case No. 143 )

BY THE COMMISSIONER:

Petitioner seeks, in this proceeding, to have determined whether the crime of which he was convicted involves moral turpitude and, in the event that it does, to have the statutory disqualification resulting therefrom removed pursuant to R.S. 33:1-31.2.

On November 28, 1934 applicant pleaded non vult in a Court of Special Sessions to an allegation charging that he had unlawfully engaged in the practice of book-making. He was fined the sum of \$100.00 and placed on probation for one year.

The primary inquiry is whether, in fact, the crime involved moral turpitude.

Applicant testified herein that during a period of about six weeks prior to his arrest in 1934, he had rented a room where he accepted fifty cent and one dollar bets on horse races from his friends. The police report made shortly after the arrest set forth that the business had been operating only a short time on a small scale and "without violence or any undue activity." The lenient sentence imposed also tends to support applicant's testimony.

Commercialized gambling may or may not involve moral turpitude. Thus, in Case No. 239, Bulletin 305, Item 9, it was held that the conviction of the head of a ring conducting gambling establishments, where the activities of the ring were attended by methods of violence, did involve moral turpitude. So also as to the convictions of the master minds engaged in conducting a lottery on a large scale. Re Case No. 283, Bulletin 337, Item 14; Re Case No. 189, Bulletin 485, Item 10. It has also been held that multiple convictions may show such a reckless disregard for law as to warrant the conclusion that the last offense involved moral turpitude. Re Case No. 246, Bulletin 293, Item 10; Re Case No. 145, Bulletin 468, Item 2. Here, however, none of the elements set forth above are found. I conclude that the single crime of which applicant was convicted does not involve moral turpitude. Cf. Re Case No. 220, Bulletin 263, Item 8; Re Case No. 325, Bulletin 403, Item 4; Re Case No. 378, Bulletin 460, Item 1.

While it is not controlling in this proceeding, it is interesting to note that a local issuing authority apparently concluded that this crime did not involve moral turpitude because, after a hearing held upon that question, it thereafter renewed a license to the corporation of which the applicant is a major stockholder. In view of the result reached herein, no order removing disqualification is necessary. Re Case No. 1, Bulletin 208, Item 6; Re Case No. 157, Bulletin 467, Item 4.

ALFRED E. DRISCOLL,  
Commissioner.

Dated: March 18, 1942.

- 7. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION - 3 DAYS' SUSPENSION - PERMITTING AND SUFFERING BOOK-MAKING, GAMBLING, AND DEVICES AND APPARATUS DESIGNED FOR SUCH PURPOSES ON OR ABOUT THE LICENSED PREMISES - PREVIOUS RECORD - 25 DAYS' SUSPENSION - TOTAL: 28 DAYS.

ORDER TO SHOW CAUSE DISMISSED.

In the Matter of Disciplinary Proceedings against J. BARNES OPERATING CORP., 223½ Halsey Street, Newark, N. J., Holder of Plenary Retail Consumption License C-728, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Carl J. Duveneck, Esq., Attorney for Licensee.  
Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant was ordered to show cause why its license should not be cancelled for the following reason:

"Said license was issued to you in violation of R. S. 33:1-25 in that David Kaplan, one of your officers and the holder of more than 10% in beneficial interest of your capital stock, would fail to qualify as an individual applicant in that he had been convicted, in the Essex County Court of Special Sessions on November 28, 1934, of book-making, a crime involving moral turpitude."

The following charges were also served upon the licensee:

"1. In your application for license dated June 10, 1940, filed with the Municipal Board of Alcoholic Beverage Control of the City of Newark, upon which Plenary Retail Consumption License C-713 for the year 1940-41 was granted, you falsely stated 'No' in answer to Question 29 therein, which asks, 'Have you or has any person mentioned in this application, ever been convicted of any crime?', whereas in truth and fact David Kaplan, mentioned in divers places in said application, had been convicted of the crime of book-making as aforesaid; said false statement being in violation of R. S. 33:1-25.

"2. On or about March 4, 1941, and on divers days prior and subsequent thereto, in violation of R.S.33:1-26, you knowingly employed, and had connected with you in a business capacity, David Kaplan, a person who would fail to qualify as a licensee by reason of his conviction of the crime of book-making, which crime involves moral turpitude.

"3. On or about February 28 and March 4, 1941 you allowed, permitted and suffered book-making and gambling, and devices and apparatus designed for such purposes, on and about your licensed premises in that you permitted bets to be made on horse races, and permitted on your licensed premises a telegraph news ticker machine, horse race betting slips and daily horse racing scratch sheets, in violation of Rule 7 of State Regulations No. 20."

Licensee, by its counsel, appeared in opposition to the order to show cause.

Licensee pleaded guilty to Charge 1 and not guilty as to Charges 2 and 3.

David Kaplan is the President and major stockholder of defendant corporation. In Re Case No. 143, decided herewith, it was ruled that said David Kaplan, who is the petitioner in said case, had not been convicted of a crime involving moral turpitude as charged. Hence the order to show cause must be dismissed. For the same reason, Charge 2 herein must also be dismissed.

As to Charge 1: The evidence shows that the application dated June 10, 1940 contained the answer "No" to Question 29 therein. An accountant who prepared the application for the corporation stated that he had never asked the President of the corporation if he had been convicted of a crime. This, of course, is no excuse. However, in mitigation, it does not appear that the issuing authority was misled by the false answer. In the latter part of 1939, when David Kaplan became a stockholder of defendant corporation, he requested and was granted a hearing by the Newark Board as to his eligibility to become a stockholder in said corporation. It appears that at

said hearing his conviction in 1934 was disclosed to the members of the Board, who thereafter took no action to revoke, suspend or cancel the license. It also appears that, on the reverse side of the application dated June 10, 1940, the Deputy Police Chief stated that he had no objection to renewal of the license unless the conviction of David Kaplan would bar renewal. In the application filed for renewal for the present fiscal year Question 29 is properly answered.

Under these circumstances, I shall suspend the license for three days for the violation set forth in Charge 1.

AS to Charge 3: On February 28, 1941, investigators of this Department visited the licensed premises and saw one Charles Stabler, alias "Dolly", taking money and writing slips; they also saw David Kaplan passing money to Stabler. A search of the licensed premises disclosed a number of racing forms under cushions in a booth, a number of torn slips in a waste basket, and nineteen slips which appear to bear the names of horses and odds thereon, which slips were found at the foot of the cellar stairs. Despite Kaplan's testimony that "Dolly" was merely a customer, and his further testimony that he never permitted anyone to take bets upon his premises, I am satisfied that on February 28, 1941 defendant, by its President, permitted book-making upon its premises and also permitted devices and apparatus designed for book-making and gambling upon its premises.

On March 4, 1941 two Sheriff's Detectives entered defendant's premises and saw eight or ten men seated at a table. They went over to the table and picked up some racing sheets. Kaplan does not dispute the fact that the racing sheets were found by the detective but states that they were brought to the premises by the patrons without his knowledge. Frankly, I do not believe his testimony. During the course of this investigation, one of the detectives answered the telephone on four occasions. He testified that all of the persons who called wanted prices on different horses and that three of the persons who asked for "Dave" tried to place bets. While there is no direct evidence that any book-making occurred on March 4, 1941, I am satisfied that on that date defendant, by its President, permitted devices and apparatus designed for book-making and gambling upon its licensed premises.

In fairness it should be noted that the testimony discloses that the telegraph news ticker machine, referred to in the charges, does not carry any reports concerning horse races.

I find the licensee guilty as to Charge 3. The minimum penalty for permitting gambling on licensed premises is ten days. In view of the fact that the charge embraces activities on two separate occasions, and in view of the previous record of the licensee's President, a penalty exceeding the minimum for this type of violation is indicated. There are none so stupid as those who refuse to learn that the law must be obeyed. If this licensee again engages in this illicit activity, its license will be forthwith revoked. The Commissioner will not tolerate and we are sure that New Jersey licensees generally do not want their premises to be operated as an accessory to a gambling establishment. The license will, therefore, be suspended for an additional twenty-five days on Charge 3, thus making a total suspension of twenty-eight days.

Accordingly, it is, on this 18th day of March, 1942,

ORDERED, that Plenary Retail Consumption License C-728, issued to J. Barnes Operating Corp. for premises 223 1/2 Halsey Street, Newark, by Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of twenty-eight (28) days, commencing March 23, 1942, at 3:00 A.M. and terminating April 20, 1942, at 3:00 A. M.

ALFRED E. DRISCOLL,  
Commissioner.

8. DISCIPLINARY PROCEEDINGS - OPERATION OF TAVERN UNDER LICENSE OF FORMER OWNER IN VIOLATION OF R. S. 33:1-26 - 10 DAYS' SUSPENSION - PERMITTING ALIEN, HOLDER OF AN EMPLOYMENT PERMIT, TO SELL ALCOHOLIC BEVERAGES IN VIOLATION OF RULE 3 OF STATE REGULATIONS NO. 11 - 10 DAYS' SUSPENSION - TOTAL: 20 DAYS, LESS 5 FOR GUILTY PLEA.

DISCIPLINARY PROCEEDINGS - SALE AND SERVICE BY ALIEN PERMITTEE CONTRARY TO CONDITIONS OF EMPLOYMENT PERMIT IN VIOLATION OF R. S. 33:1-26 - NO APPEARANCE - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against )

RAYMOND W. FROMM, )  
T/a LAVALLETTE HOTEL, )  
601 Grand Central Avenue, )  
Lavallette, N. J., )

Holder of Plenary Retail Consumption License C-3, issued by the Borough Council of the Borough of Lavallette. )

CONCLUSIONS  
AND ORDER

In the Matter of Disciplinary Proceedings against )

VICTOR PAUL PISANI, )  
15 President Avenue, )  
Lavallette, New Jersey, )

Holder of Employment Permit 3393, issued by the State Commissioner of Alcoholic Beverage Control. )

Raymond W. Fromm, Pro Se.  
Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.  
No Appearance on behalf of Victor Paul Pisani.

BY THE COMMISSIONER:

The above cases, being closely related, were heard together and, since the entire matter may be disposed of herein, both cases will be decided together. The Fromm case will be considered first.

In that case Fromm has pleaded guilty to the charges (1) that, during May and June of 1941, he operated the tavern in question under the license of the former owner, Louis H. Parodi, in violation of R. S. 33:1-26; and (2) that, on September 3, 1941 and on various days prior thereto, he allowed Victor Paul Pisani, the holder of an alien's employment permit, to sell and serve alcoholic beverages at the tavern, in violation of Rule 3 of State Regulations 11.

The facts as to charge (1) show that Fromm bought and took over the tavern from Parodi (the former owner) on May 1, 1941; that, to avoid paying any fee to the Borough for transfer of the license, Fromm purposefully conducted the tavern for the remaining two months of that fiscal year (i.e., May and June) under guise of Parodi's license; and then, at commencement of the current fiscal year, obtained the license for the tavern in his own name.

For this fraudulent effort at economy at the expense of the Borough and proper observance of the liquor laws, Fromm's license will, keeping in mind his present frank disclosure, be suspended for ten days.

The facts as to charge (2) show that Fromm permitted Victor Paul Pisani, an Italian, holder of an alien's permit, to act as a regular bartender at the tavern despite the fact that Pisani is disqualified by his alienage from such activity. See R.S. 33:1-25, 26; Re Woertendyke, Bulletin 304, Item 8. Pisani's permit merely authorizes him to engage in jobs other than the selling, serving, mixing or handling of alcoholic beverages.

If Fromm's use of Pisani as a bartender were merely an unwitting violation, his license would, for such violation, be suspended for five days. See Re Broodwinner, Bulletin 477, Item 3; Re Mancuso, Bulletin 499, Item 7.

However, it is clear that both Fromm and Pisani were amply aware of the limitation in the permit. Since Fromm wilfully chose to ignore that restriction and use Pisani as a regular bartender, his license, for such violation, will be suspended for ten days, making, when added to the ten-day suspension on charge (1), a total suspension of twenty days. Five days will be remitted therefrom because of the guilty plea, leaving a net of fifteen days.

In the affiliate proceeding Pisani is charged with having engaged in the aforementioned bartending activity at the tavern contrary to the terms of his permit and in violation of R. S. 33:1-26.

Although Pisani entered no appearance at the hearing, I find him, on the basis of the above recited facts, guilty as charged.

This Department, in issuing its many employment permits to aliens, relies primarily upon the good faith of their sworn and express statement in their applications that they will adhere fully to the restriction in the permit. It is virtually impossible for the Department to maintain a daily round-the-clock check on them at wherever they may be working to see whether they are living up to that restriction. Hence, where, as here, such a permittee wholly and deliberately disregards the restriction by taking employment as a regular bartender, a heavy penalty against the permittee is clearly in order. Cf. Re Broodwinner, *supra*, and Re Mancuso, *supra* (where, even though the aliens there involved acted as bartender in purported innocence, their employment permits were suspended for thirty days).

In view of such fact and Pisani's "no appearance" in the case, his permit will be revoked outright.

Accordingly, it is, on this 18th day of March, 1942,

ORDERED, that Plenary Retail Consumption License C-3, heretofore issued by the Borough Council of the Borough of Lavallette to Raymond W. Fromm, t/a Lavallette Hotel, for premises 601 Grand

Central Avenue, Lavalette, be and the same is hereby suspended for a period of fifteen days, commencing March 23, 1942, at 2:00 A.M. and concluding at 2:00 A.M. April 7, 1942; and it is further

ORDERED. that Employment Permit 3393, issued by the State Commissioner of Alcoholic Beverage Control to Victor Paul Pisani, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL  
Commissioner.

9. DISCIPLINARY PROCEEDINGS - RULE DISMISSING WRIT OF CERTIORARI HAVING BEEN ENTERED, SUSPENSION REESTABLISHED.

In the Matter of Disciplinary Proceedings against )  
JOSEPH STAFFORD, )  
3004 Black Horse Pike, )  
West Collingswood, )  
Haddon Township, )  
P.O. Collingswood, N.J., )  
Holder of Plenary Retail Consumption License C-3 issued by the Township Committee of Haddon Township. )  
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ORDER

It appearing that Plenary Retail Consumption License C-3 for the fiscal year 1940-41 issued to Joseph Stafford for premises 3004 Black Horse Pike, West Collingswood, by the Haddon Township Committee, was suspended for ten days for possession of a Mills "1-2-3" machine by Conclusions and Order herein dated May 19, 1941 (Re Stafford, Bulletin 461, Item 3), and

It further appearing that the operation of said Order of suspension was stayed pending disposition of a writ of certiorari allowed by the New Jersey Supreme Court to review the legality of said Conclusions and Order, and

It further appearing that the New Jersey Supreme Court has rendered an opinion dismissing the writ (Stafford v. Garrett, Bulletin 498, Item 2), and that a Rule dismissing the writ of certiorari was entered in the office of the Clerk of the New Jersey Supreme Court on March 11, 1942, and

It further appearing that since the entry of the Conclusions and Order the license of Joseph Stafford for the fiscal year 1940-41 has expired and has been renewed by the issuance of Plenary Retail Consumption License C-3 for the fiscal year 1941-42 for the same premises by the Haddon Township Committee,

Accordingly, it is, on this 19th day of March, 1942, ORDERED, that Plenary Retail Consumption License C-3 for the fiscal year 1941-42, heretofore issued to Joseph Stafford for premises 3004 Black Horse Pike, West Collingswood, by the Township Committee of Haddon Township, be and the same is hereby suspended for a period of ten days commencing March 30, 1942, at 2:00 A.M., and ending April 9, 1942, at 2:00 A. M.

*Alfred E. Driscoll*  
Commissioner.