

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

BULLETIN 624

JUNE 23, 1944.

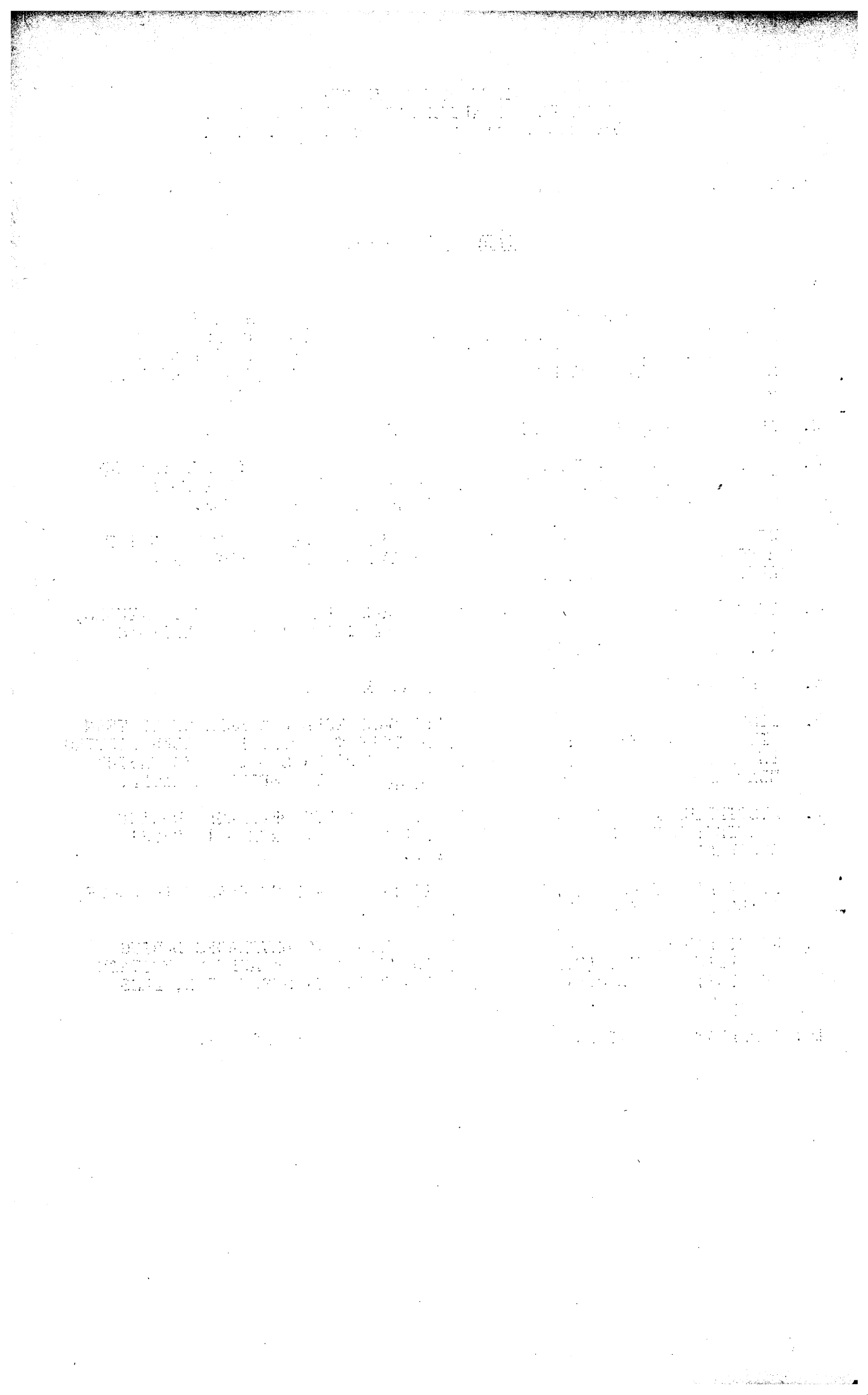
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DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark, 2, N. J.

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JUNE 23, 1944.

1. DISCIPLINARY PROCEEDINGS - PERMITTING GAMBLING ON LICENSED PREMISES, IN VIOLATION OF RULE 7 OF STATE REGULATIONS NO. 20 - SALE OF ALCOHOLIC BEVERAGES IN VIOLATION OF R. S. 33:1-26 AND RULE 1 OF STATE REGULATIONS NO. 11 - 25 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

JEANNETTE GOLDBERG
T/a JEWELL BAR & GRILL
8 Outwater Lane
Garfield, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-31, issued by the City Council of the City of Garfield.

Chandless, Weller & Kramer, Esqs., Attorneys for Defendant-Licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads non vult to charges (1) that she allowed, permitted and suffered bookmaking and gambling on and about her licensed premises, in violation of Rule 7 of State Regulations No. 20; and (2) that she knowingly employed a minor to work on the licensed premises and permitted him to sell and serve alcoholic beverages, in violation of R. S. 33:1-26 and also Rule 1 of State Regulations No. 11.

Investigators of the Department of Alcoholic Beverage Control, at divers times, placed bets on horses with the bartender employed by the licensee and also with the licensee's son. The reports of the investigators show that the gambling was sanctioned by the defendant, even though this is denied by her.

The son of the licensee, a minor, was permitted, at times, by the defendant to work on the licensed premises and to sell and dispense alcoholic beverages to patrons.

I shall suspend the license for twenty days on the gambling charge and for five days on the minor charge, or a total of twenty-five days. Five days will be remitted for the plea of non vult entered herein, leaving a net suspension of the license for a period of twenty days.

Accordingly, it is, on this 15th day of June, 1944,

ORDERED, that Plenary Retail Consumption License C-31, issued by the City Council of the City of Garfield to Jeanette Goldberg, t/a Jewell Bar & Grill, for premises 8 Outwater Lane, Garfield, be and the same is hereby suspended for the balance of its term, effective at 4:00 A. M. June 19, 1944; and it is further

ORDERED, that if any license be issued to this licensee or any other person for the premises in question for the 1944-45 fiscal year, such license shall be under suspension until 5:00 A. M. July 9, 1944.

ALFRED E. DRISCOLL
Commissioner.

2. APPELLATE DECISIONS - BILL BLOCH, INC. v. UNION CITY.

BILL BLOCH, INC.,)
)
 Appellant,)
 -vs-)
 BOARD OF COMMISSIONERS OF THE)
 CITY OF UNION CITY,)
 Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

Isidore Dworkin, Esq. and Carl Abruzzese, Esq., Attorneys for)
 Appellant.)
 James C. Agnew, Esq., by Cyril J. McCauley, Esq., Attorney for)
 Respondent.)

BY THE COMMISSIONER:

This is an appeal from the revocation of the appellant's plenary retail consumption license by the Board of Commissioners of the City of Union City. A petition for the stay of the revocation was denied and appellant's place of business has been closed since April 28, 1944.

The charges upon which the appellant was adjudged guilty by the respondent are, in substance, (1) that it falsely answered Question No. 33 in its application for a liquor license to the effect that no person mentioned in said application had ever been convicted of a crime, whereas in truth and in fact Gioacchino DeMarco, the President of the appellant corporation, had been convicted of a crime, on May 11, 1936; (2) that at divers times it permitted on the licensed premises a person of ill repute, to wit, Gioacchino DeMarco, in violation of Section 15 of a Union City Alcoholic Beverage Ordinance; (3) that at divers times it permitted in and upon the licensed premises Gioacchino DeMarco, a known criminal; (4) that at divers times it permitted females on the licensed premises in order to solicit drinks from customers; (5) that "at divers times it permitted females to attend in the licensed premises and make assignations for improper purposes", in violation of Section 15 of a Union City Alcoholic Beverage Ordinance; (6) that at divers times it sold alcoholic beverages to minors, in violation of R. S. 33:1-77; (7) that at divers times it allowed, permitted and suffered the service and delivery of alcoholic beverages to minors, in violation of State Regulations No. 20, Rule 1 and Section 12 of a Union City Alcoholic Beverage Ordinance; (8) that at divers times it permitted the licensed premises to be conducted in such a manner as to become a nuisance, in violation of State Regulations No. 20 and Rule 5 of Section 16 of a Union City Alcoholic Beverage Ordinance; and (9) that, between July 1, 1943 and April 10, 1944, it allowed a disorderly person, to wit, Gioacchino DeMarco, in and upon the licensed premises, in violation of Section 15 of a Union City Alcoholic Beverage Ordinance.

This appeal was submitted by the parties herein upon the stenographic transcript of the proceedings before the issuing authority, pursuant to Rule 8 of State Regulations No. 14 of the Department of Alcoholic Beverage Control.

The application filed by the appellant for the current license year and signed by one Gioacchino DeMarco as President of the appellant corporation, fails to disclose that in 1929 the latter had been convicted of assault and battery and placed on probation for one month.

The application likewise failed to disclose DeMarco's conviction of the crime of carrying concealed weapons in the Essex County Court of Quarter Sessions in May of 1936. As a result of the second conviction, Gioacchino DeMarco was fined \$250.00 and placed on probation for a period of three years and ordered to pay \$1.00 weekly to the Chief Probation Officer during the period of probation. Gioacchino DeMarco, in an attempted explanation for the false answer to Question No. 33 in the application for appellant's liquor license, stated that because of his inability to read and write the English language the application was prepared by another person. This person, according to DeMarco, merely asked him whether or not he had ever been in jail. Not having served a jail sentence at any time, DeMarco stated that he answered in the negative. Even though this be true, it does not in any manner constitute a defense for the false answer in the application.

As to charges (2), (3) and (9), I am reluctant to characterize DeMarco as a person of ill repute or a known criminal or a disorderly person because the crimes for which he was convicted in 1929 and 1936 did not, per se, involve the element of moral turpitude nor do they come within the category of those heinous crimes which necessarily stigmatize one as a known criminal or a person of ill repute. Apparently, DeMarco has no other criminal record. Aside from the record of these convictions, no proof was offered as to the reputation of DeMarco. Cf. Stromberg v. Judge etc., County of Camden, 118 N.J.L. 387. Therefore, I shall reverse the finding of guilt as to charges (2), (3) and (9). Likewise, I shall reverse the finding of guilt as to charge (5). There appears to be no evidence in the record to substantiate the charge that females were permitted on the licensed premises to make "assignments" for improper purposes, in violation of Section 15 of the local ordinance.

Four young women, two of whom were minors, testified that the licensee permitted them to receive and consume alcoholic beverages paid for by male patrons. These witnesses, none of whom were employees of the appellant, stated that upon occasions men were introduced to them by the appellant's president. The latter, the young women charge, advised them to order rum colas rather than beer when they were being treated. DeMarco emphatically denies this charge. There does not appear to be any reason why the girls should have given false testimony. Their several stories are consistent and find some corroboration in the admissions of DeMarco that the girls were served in the premises and did occasionally "get acquainted" with male patrons with whom they danced and drank. The respondent found the licensee guilty of permitting females on the licensed premises in order to solicit drinks from customers in violation of Section 15 of the local ordinance. The testimony supports this conclusion. I shall affirm the finding of guilt as to charge (4). Solicitation may assume many different forms.

The testimony discloses that three nineteen year old minors were served alcoholic beverages at various times on the licensed premises by DeMarco or another employee of the appellant. In its defense, the appellant offered in evidence three statements in writing signed by these girls at the request of DeMarco wherein they severally represent that they were over twenty-one years of age. The three girls appeared and testified before the local issuing authority. They also appeared before the Commissioner. The fourth minor did not appear before the respondent. Each of these three girls appeared to be a minor. After making due allowance for any possible difference in their appearance in a tap-room, I am compelled to find that the appearance of the three minors was such that "an ordinary prudent person" could not have believed any one of them to be twenty-one

years of age or over. Their known marital status did not conceal their youthful appearance. The licensee, under the circumstances, was not justified in relying on their written statements. Appellant, having failed to establish one of the essential facts required by R. S. 33:1-77*, may not escape the consequences of its unlawful sale of alcoholic beverages. I shall affirm the finding of guilt as to charges (6) and (7) in so far as they relate to the three minors.

The final question to be determined is whether the licensed premises were conducted in such manner as to become a nuisance within the meaning of Rule 5 of State Regulations No. 20. In State v. Williams, 30 N. J. L. 102, 104, the Court stated:

"Any place of public resort, whether an inn, a dwelling house, a storehouse, or any other building, or garden, is a public nuisance, in which illegal practices are habitually carried on, or when it becomes the habitual resort of thieves, drunkards, prostitutes, or other idle, vicious, and disorderly persons, who gather together there for the purpose of gratifying their own depraved appetites, or to make it a rendezvous where plans may be concocted for depredations upon society, and disturbing either its peace or its rights of property.

"Such collections of persons can have no other effect than to debauch and deprave the public morals, although they may be quiet and orderly places, so far as mere noise and confusion is concerned; although the most scrupulous cleanliness may be observed, and they may be magnificent in ornament, and luxurious in their provisions for mere sensual gratifications, they are notable nuisances at common law, because they are nocuenti, nuisances, that is, injurious to the public health, public quiet, or public morals." (emphasis ours.)

The repeated violations by the licensee of R. S. 33:1-77, Rule 1 of State Regulations No. 20 and the local ordinance over a period of time lead me to the conclusion that the licensee did permit its premises to be operated in such a manner as to become a nuisance within the meaning of Rule 5 of State Regulations No. 20. Cf. State v. Elliott, 129 N. J. L. 169.

*R. S. 33:1-77 provides:

"Anyone who sells any alcoholic beverages to a minor shall be guilty of a misdemeanor; provided, however, that the establishment of all of the following facts by a person making any such sale shall constitute a defense to any prosecution therefor: (a) that the minor falsely represented in writing that he or she was twenty-one (21) years of age or over, and (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one (21) years of age or over, and (c) that the sale was made in good faith relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one (21) years of age or over."

The suspension to be imposed in local disciplinary proceedings rests, in the first instance, within the discretion of the local issuing authority. In the present case, the record does not disclose whether the issuing authority would have revoked the license if it had not found the licensee guilty of all the charges. In view of the fact that I have reached the conclusion that the decision below must be affirmed in part (charges (1), (4), (6), (7) and (8)) and reversed in part (charges (2), (3), (5) and (9)), I will modify the revocation to one of suspension for the balance of the term for the sole purpose of giving the issuing authority a further opportunity to determine whether under all the circumstances a renewal license should be issued to the appellant in the event the latter decides to apply for the same.

Accordingly, it is, on this 15th day of June, 1944,

ORDERED, that the penalty of revocation of Plenary Retail Consumption License C-139, heretofore issued by the Board of Commissioners of the City of Union City to Bill Bloch, Inc. for premises 615 Paterson Plank Road, Union City, be and the same is hereby modified to a suspension of said license for the balance of the term, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

- 3. MORAL TURPITUDE - FACTS EXAMINED - CRIME OF ASSAULT AND BATTERY FOUND NOT TO INVOLVE MORAL TURPITUDE - CRIME OF CARRYING A CONCEALED WEAPON FOUND NOT TO INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - APPLICANT FOUND NOT TO HAVE BEEN CONVICTED OF A CRIME INVOLVING MORAL TURPITUDE - APPLICATION DISMISSED.

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

CONCLUSIONS

Case No. 340.)
- - - - -)

BY THE COMMISSIONER:

In this proceeding, Gioacchino DeMarco prays that the statutory disqualification, if any, resulting from various convictions hereinafter set forth, be lifted pursuant to R. S. 33:1-31.2. Petitioner is President of Bill Bloch Inc., appellant in the case of Bill Bloch Inc. v. Union City, decided herewith.

In October 1928 petitioner was convicted in a Police Court of the City of Newark as a disorderly person and fined \$50.00. In April 1929 he was convicted in a Police Court of the City of Newark on a charge of assault and battery and received a suspended sentence. In May 1936 he was convicted in the Court of Quarter Sessions of Essex County on a charge of carrying concealed weapons, and was placed on probation for three years and fined \$250.00.

It has been decided repeatedly that conviction as a disorderly person is not a conviction of a crime. Re Hearing 171, Bulletin 195, Item 6. The conviction for assault and battery resulted from a dispute with another individual, during the course of which petitioner struck the other individual with his fist "because he started to call me names." This conviction does not involve moral turpitude. Hence, unless the conviction which occurred in 1936 involved moral turpitude, it appears that petitioner is not disqualified by statute from holding a liquor license.

The police report discloses that, in September 1935, Gioacchino DeMarco was arrested in the City of Newark when a loaded gun was found in the front right compartment of an automobile which he was driving. At the hearing herein, petitioner testified that this gun had been given to him in 1921 by his father-in-law and had been kept in his summer home at Absecon, N. J. He states that, at the time of his arrest, he was bringing this gun with other items from his summer home to his permanent residence in Belleville, N. J. when he was stopped in the City of Newark by members of the Police Department who, during the course of questioning him as to license plates on his car, saw the gun in the right compartment of the car and placed him under arrest. The evidence of petitioner and his witnesses satisfies me that, since petitioner arrived in this country more than twenty-three years ago, he has been engaged in legitimate business and that he has not associated with gangsters or racketeers. The crime of carrying a concealed weapon may or may not involve moral turpitude. When the crime stands alone, unattended by other crimes or intent to commit other crimes, it does not ordinarily involve moral turpitude. Re Case No. 131, Bulletin 451, Item 7. After considering all the facts of this case, I believe that the crime of carrying a concealed weapon, of which petitioner was convicted in May 1936, does not involve moral turpitude.

It appearing that petitioner has never been convicted of a crime involving moral turpitude, no order removing disqualification because of any of the convictions mentioned herein is required.

ALFRED E. DRISCOLL
Commissioner.

Dated: June 15, 1944.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against POLISH FALCONS #59 INC. 1002-1004 N. Olden Ave. Trenton, 8, N. J., Holder of Plenary Retail Consumption License C-74, issued by the Board of Commissioners of the City of Trenton.

CONCLUSIONS AND ORDER

Hon. George Pellettieri, Attorney for Defendant-Licensee. Milton H. Cooper, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded not guilty to a charge alleging that it sold and served alcoholic beverages to two minors, and permitted the minors to consume alcoholic beverages on its licensed premises, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

On April 26, 1944, shortly before 9:00 P. M., Jessie H----, a private in the U. S. Army, and Shirley C----, both of whom are nineteen years old, arrived at the defendant's premises, where a dance was scheduled for that evening. They purchased admission tickets but, because the dance had not yet started, proceeded to the bar. Jessie bought two drinks of whiskey and carried them to a table where Shirley had seated herself. After they consumed these drinks, Jessie opened a sealed bottle of liquor which he had brought with him, and both minors proceeded to have several drinks from the bottle.

They later returned to the barroom, after having danced on the floor above for some time, and each had a glass of beer, followed by some more drinks from the bottle.

On behalf of the defendant, a local police officer testified that he stationed himself on the inside of the licensed premises, near the entrance, at about 8:45 P.M. of the night in question. This officer, who is a member of the defendant organization, stated that he noticed the minors when they entered and observed that Shirley appeared to be under the influence of intoxicating liquor. He thereupon instructed the minors to leave and, after a short discussion with them, escorted them to the outside of the building.

The record thus discloses a square conflict between the testimony of the minors and that of the witness produced by the defendant. Several minor inconsistencies appear in the stories of the soldier and also of the police officer. The soldier, who had returned to the premises with ABC agents on April 29, 1944, first denied that he had, on that occasion, spoken with one of the bartenders and then admitted that he had. The police officer stated that the soldier appeared as if he "had been drinking" because he "staggered a little" and later, in response to a direct question, admitted that he didn't know whether or not the soldier had "staggered."

A most pertinent factor is disclosed, however, from the testimony of the investigator for the local issuing authority. She testified that she had interviewed Shirley on the afternoon following the incident and that the minor had described the licensed premises "accurately, particularly the ladies' room, which is quite a ways around the building....." Since it appears that neither of the minors had ever visited the defendant's establishment prior to April 26, 1944, it is quite evident that Shirley could not have given an accurate description of the ladies' room if the event had occurred as related by the defendant's witness.

In view of the completely opposing stories, I have carefully scanned the entire record in this case and have reached the conclusion that the greater weight of the credible testimony rests with the stories told by the witnesses produced by the prosecution. I am satisfied that both minors were served and consumed alcoholic beverages at the defendant's premises as charged and, therefore, find the defendant guilty.

Since the defendant has no previous record, I shall impose the usual penalty of ten days.

Accordingly, it is, on this 15th day of June, 1944,

ORDERED, that Plenary Retail Consumption License C-74, heretofore issued by the Board of Commissioners of the City of Trenton to Polish Falcons #59 Inc., for premises 1002-1004 N. Olden Ave., Trenton, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A. M. June 20, 1944 and terminating at 2:00 A. M. June 30, 1944.

ALFRED E. DRISCOLL
Commissioner.

5. APPELLATE DECISIONS - SILVERSTEIN v. BELMAR.

BENJAMIN SILVERSTEIN,)
Appellant,)
-vs-)
BOARD OF COMMISSIONERS OF THE)
BOROUGH OF BELMAR,)
Respondent)
-----)

ON APPEAL
CONCLUSIONS AND ORDER

Durand, Ivins & Carton, Esqs., by J. Victor Carton, Esq.,)
Attorneys for Appellant.)

No appearance for Respondent.

BY THE COMMISSIONER:

This is an appeal from the action of respondent denying appellant's application for a plenary retail distribution license for premises known as 904 F Street, Belmar.

After respondent denied the application, the Borough Clerk advised appellant, in writing, as follows:

"An executive session of the Board of Commissioners of the Borough of Belmar was held Tuesday evening May 23rd for the purpose of again considering the application of Benjamin Silverstein for a Retail Distribution Alcoholic Beverage License and they decided that there are enough liquor

establishments in the Borough of Belmar to supply the needs of the public and therefore do not see their way clear to amend the ordinance which limits the number of licenses of this class."

On May 17, 1938 respondent approved an ordinance providing that the number of plenary retail distribution licenses issued and outstanding in the Borough of Belmar at the same time shall not exceed two (2). That provision of the ordinance remains unchanged. There have never been more than two distribution licenses in the Borough. There are now two -- one for premises at 915 F Street and the other for premises at 1000 F Street -- both of which are in the immediate vicinity of appellant's premises.

In his petition of appeal appellant alleges that the action of respondent was arbitrary and unreasonable because (1) the population of the Borough has doubled while the population of adjoining municipalities has greatly increased since the limiting ordinance was passed in May 1938, and (2) on several occasions the original limiting ordinance has been amended to permit the granting of other types of licenses to other applicants.

Respondent filed no answer and failed to appear at the hearing scheduled herein. However, neither the Alcoholic Beverage Law nor the Rules and Regulations of this Department contemplate a judgment by default. When respondent failed to appear, appellant was permitted to proceed "ex parte" in accordance with Rule 10 of State Regulations No. 14. Under Rule 6 of the same Regulations, the burden of establishing that the action of respondent was erroneous and should be reversed rests with the appellant. Cf. Crociata v. Clifton; Bulletin 189, Item 6.

The evidence presented by appellant establishes that he conducts a grocery and delicatessen store at 904 F Street, Belmar, located about midway in the Borough's principal business section, which extends four blocks along F Street from Seventh to Eleventh Avenues. Appellant testified that his business has "practically doubled" during the past six years. He produced five witnesses -- a banker, postmaster, hotel owner, realtor and building inspector -- whose testimony establishes that during the past six years there has been a substantial increase in the permanent population and a very large increase in the summer population of the Borough and adjoining municipalities.

Although the evidence establishes a substantial increase since 1938 in the amount of business carried on within the Borough, I conclude that the evidence is not sufficient to show that respondent acted arbitrarily or unreasonably in refusing to amend the ordinance and grant a third distribution license within this small business section.

The evidence also shows that, by an amending ordinance approved on May 28, 1940, respondent increased the permissible number of plenary retail consumption licenses from seven to eight, and that on May 9, 1944 it approved an amending ordinance increasing the permissible number of seasonal retail consumption licenses from five to six. The purposes to be served by either type of consumption license are, of course, distinctly different from the purposes to be served by a plenary retail distribution license. The fact that members of respondent Board, in the exercise of their discretion, decided to increase the number of consumption licenses, but refused to increase the number of distribution licenses, does not indicate discrimination against the appellant.

For the reasons aforesaid, the action of respondent is affirmed.

Accordingly, it is, on this 16th day of June, 1944,

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

ALFRED E. DRISCOLL
Commissioner.

6. DISCIPLINARY PROCEEDINGS - LICENSE SUSPENDED FOR BALANCE OF TERM WITH PERMISSION TO BONA FIDE TRANSFEREE TO APPLY FOR ORDER LIFTING THE SUSPENSION AFTER THE EXPIRATION OF 90 DAYS - 90 DAYS HAVING ELAPSED, APPLICATION TO LIFT BY BONA FIDE TRANSFEREE GRANTED.

In the Matter of Disciplinary Proceedings against)	
THOMAS F. VESEY)	
75 Orange Street)	ON PETITION
Newark, N. J.,)	ORDER
Holder of Plenary Retail Consumption License C-924, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)	

Bernard S. Wildstein, Esq., Attorney for Thomas F. Vesey.
Walter P. Reilly, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

By Conclusions and Order dated February 29, 1944, I suspended the plenary retail consumption license held by Thomas F. Vesey for premises 75 Orange Street, Newark, N. J. for the balance of its term, effective March 6, 1944, reserving the right, however, to a bona fide transferee to apply to me for a lifting of said suspension after ninety days thereof had expired. Re Vesey, Bulletin 608, Item 1.

Pursuant to such reservation, the 75 Orange Street, Inc., a corporation, has submitted a verified petition from which, among other things, it appears that the corporate petitioner is a bona fide purchaser of the license and business formerly conducted by Thomas F. Vesey and that a transfer of the license in question was approved by the local issuing authority on June 1, 1944. All of the material allegations of said petition have also been substantiated by oral testimony given by the President and Vice-President of the corporate petitioner.

Since the aforesaid suspension has now been in effect for more than ninety days, I shall lift the said suspension, effective immediately.

Accordingly, it is, on this 15th day of June, 1944,

ORDERED, that the suspension heretofore imposed against Plenary Retail Consumption License C-924, originally issued to Thomas F. Vesey for premises 75 Orange Street, Newark, N. J., and transferred on June 1, 1944 to 75 Orange Street, Inc., a corporation, be and the same is hereby lifted, and the said license is hereby restored to full force and operation, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against FIRST WARD REPUBLICAN CLUB OF CAMDEN, N. J. 47 York Street Camden, N. J., Holder of Club License CB-45 issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

CONCLUSIONS AND ORDER

First Ward Republican Club of Camden, N. J., by Joseph D. Elliott, Chairman of Trustees. Gaylord R. Hawkins, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleads guilty to a charge alleging that on Sunday, April 30, 1944, it sold, served and delivered alcoholic beverages during prohibited hours, in violation of Section 5 of a local ordinance.

The local ordinance prohibits the sale of alcoholic beverages after 2:00 A. M. on Sunday. About 3:40 A. M. on the said morning, agents of the Alcoholic Beverage Control Department visited the premises and observed lights in the club and persons entering and leaving. They followed a party of four and attempted to enter the premises. Although two doorkeepers tried to stop them, they managed to get inside and observed customers seated at the tables with what appeared to be alcoholic beverages in front of them. They also saw a bartender ring up a cash sale of fifty cents, and serve alcoholic beverages at the bar. They seized several bottles containing beer from some of the customers.

I have previously pointed out the unfairness of the situation where licensed clubs are permitted to secure licenses at a substantially lower fee than for retail licenses in order to permit them to serve their members and their guests during legal hours and then abuse this privilege by serving after hours or to non-members. Re South Camden Bocce Club, Bulletin 609, Item 9. While all those inside the premises apparently were members or bona fide guests of members, nevertheless the element of unfair competition does enter in this case and, if this practice is continued among other licensed clubs, it may well call for the imposition of more drastic penalties.

The minimum suspension recommended for "after hours sale" violation of the local ordinance is fifteen days. Re Wasiluk, Bulletin 608, Item 10. The licensee has a clear record and, because of this, I will impose the minimum fifteen days' suspension, less five days for the guilty plea, making a net suspension of ten days.

Accordingly, it is, on this 15th day of June, 1944,

ORDERED, that Club License CB-45, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to First Ward Republican Club of Camden, N. J., for premises 47 York Street, Camden, be and the same is hereby suspended for ten (10) days, commencing at 2:00 A.M. June 21, 1944, and terminating at midnight, June 30, 1944.

ALFRED E. DRISCOLL Commissioner.

8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN PROOF, ACIDS AND SOLIDS - 30 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against
 THOMAS MESSINA & ORTENZIO CINO
 257 Market Street
 Newark, N. J.,
 Holder of Plenary Retail Consumption License C-328, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Ralph A. Villani, Esq., Attorney for Defendant-Licensees.
 Milton H. Cooper, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensees plead guilty to the charge alleging that they possessed seven bottles labeled "Carstairs White Seal Blended Whiskey, 86.8 Proof", all of which bottles contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

On April 24, 1944 agents of the Federal Alcohol Tax Unit, after testing 40 bottles of liquor, seized seven bottles of "Carstairs White Seal Blended Whiskey, 86.8 Proof" when the tests indicated that the contents thereof appeared to be darker in color than is usual for that brand. Subsequent analysis of the contents of the bottles in question by the Federal Chemist revealed variations in proof, acids and solids when compared with an analysis made of a genuine sample.

In attempted mitigation, defendants allege that they had poured the liquor from pint bottles to quart bottles bearing the same label. That, of course, constitutes a serious violation. More important, however, is the fact that the chemical analysis leads me to conclude that the contents of the seized bottles varied from the genuine sample of the same whiskey.

Thomas Messina, one of the defendants herein, has a prior record. In 1940 a license held by him was suspended for ten days after he was found guilty of selling alcoholic beverages and permitting his place of business to remain open during prohibited hours. Re Messina & Ruisi, Bulletin 392, Item 12.

In view of the number of bottles involved and the prior record of Thomas Messina, I shall suspend the defendants' license for a period of thirty days. Cf. Re Twelve East Park Street Tavern, Inc., Bulletin 481, Item 9; Re La Rosa, Bulletin 605, Item 8.

Accordingly, it is, on this 16th day of June, 1944,

ORDERED, that Plenary Retail Consumption License C-328, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Thomas Messina & Ortensio Cino for premises 257 Market Street, Newark, be and the same is hereby suspended for the balance of its term, effective at 2:00 A. M. June 19, 1944; and it is further

ORDERED, that if any license be issued to the present licensees or any other person for the premises in question for the 1944-45 fiscal year, such license shall be under suspension until 2:00 A. M. July 19, 1944.

ALFRED E. DRISCOLL
Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS (ELECTION DAY) IN VIOLATION OF RULE 2 OF STATE REGULATIONS NO. 20 - PRIOR RECORD - 20 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

DANIEL J. TANSEY
T/a 72 CLUB
72 Main Street
Hackensack, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-7, issued by the City Council of the City of Hackensack.

George W. Weleck, Esq., Attorney for Defendant-Licensee.
Edward F. Hodges, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads guilty to the following charge:

"At about 7:20 A. M. on May 16, 1944, Primary Election Day, you sold at retail and delivered alcoholic beverages to consumers while the polls were open for voting, in violation of Rule 2 of State Regulations No. 20."

On the morning in question, at 7:20 A. M., local police found the licensed premises open and doing business. Customers were being served whiskey and beer. The janitor told the police that the bartender had been told by the proprietor to close the place at 7:00 A.M. and go home. The licensee makes the same explanation. However, the responsibility is the licensee's. It is up to him to see to it that alcoholic beverages are not sold during prohibited hours. The licensee has a prior record. Effective April 12, 1943, his license was suspended for five days by the municipal authorities for selling to intoxicated persons. In Re Sabin, Bulletin 590, Item 13, I announced that sales on Election Day during prohibited hours came within the purview of the policy of a fifteen-day minimum suspension where the licensee had no previous record or where there were no aggravating circumstances. This same policy applies to sales on Primary Day.

Because defendant has a prior record, I will impose a twenty-day suspension, less five for the guilty plea, making a net penalty of fifteen days' suspension.

Accordingly, it is, on this 16th day of June, 1944,

ORDERED, that Plenary Retail Consumption License C-7, issued by the City Council of the City of Hackensack to Daniel J. Tansey, t/a 72 Club, for premises 72 Main Street, Hackensack, be and the same is hereby suspended for the balance of its term, effective at 3:00 A. M. June 22, 1944; and it is further

ORDERED, that if any license be issued to this licensee or any other person for the premises in question for the 1944-45 fiscal year, such license shall be under suspension until 3:00 A. M. July 7, 1944.

ALFRED E. DRISCOLL
Commissioner.

10. APPELLATE DECISIONS - MULBERRY TAVERN, INC. v. NEWARK.

MULBERRY TAVERN, INC.)	
Appellant,)	
-vs-)	ON APPEAL
)	CONCLUSIONS AND ORDER
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF THE CITY)	
OF NEWARK,)	
Respondent)	

Sidney Simandl, Esq., Attorney for Appellant,
 Raymond Schroeder, Esq., by Louis A. Fast, Esq., Attorney for
 Respondent.

BY THE COMMISSIONER:

Appellant appeals from the action of the Municipal Board of Alcoholic Beverage Control of the City of Newark denying the renewal of its plenary retail consumption license for the present fiscal year for premises at 153 Mulberry Street, Newark. Upon the filing of the appeal, the license for the fiscal year 1942-43 was extended pending the determination of the appeal, in accordance with the provisions of R. S. 33:1-22. The appellant has held successive licenses for the premises in question for the past seven years.

Respondent gives as its reasons for the denial (1) appellant "has a police record of complaints" and (2) the number of times that appellant has been before the respondent in disciplinary proceedings (or otherwise).

It is admitted that, on November 2, 1942, respondent suspended appellant's license for a period of twenty-five days after it had pleaded non vult to a charge of permitting a known criminal or person of ill repute on its licensed premises, in violation of Rule 4 of State Regulations No. 20.

During the fiscal year 1942-43, two other disciplinary proceedings were instituted by respondent against the appellant. The charges in both proceedings were subsequently dismissed.

When the charges in the last disciplinary proceedings were dismissed in February 1943, the Chairman of the Municipal Board advised Samuel Weinberg, President of Mulberry Tavern, Inc., that if the licensee was thereafter found guilty of any further violations, its license would probably be revoked. Thus, the licensee was put to the test of its future good behavior. Appellant appears to have taken this warning to heart. No disciplinary proceedings were thereafter brought against the appellant. The evidence given by the appellant's witnesses and the testimony given by the police officers who were called on behalf of respondent in the present appeal leads me to the conclusion that appellant has made an earnest effort to cooperate with the police and that there has been a very definite improvement in the appearance and conduct of the licensed premises since the warning in February 1943.*

*Licensee has been operating now for eleven months under the extension of its license and no complaints have been brought to my attention in that time as to the manner in which the premises have been conducted.

Where a licensee has made what appears to be a conscientious effort to cooperate with the enforcement authorities and has improved the operation of his business, it is but natural that he should expect to be rewarded by the renewal of his license unless the record before the issuing authority clearly discloses that he is otherwise disqualified or an unfit person to hold a license. In general, this would appear to be sound policy; namely, to reward those who try and achieve while punishing those who neither try nor achieve.

Respondent supports its refusal to renew by pointing to the November 1942 suspension and a "police record" that was offered in evidence.

Although the suspension did not mandatorily disqualify the appellant, there have been numerous cases where renewals have been denied and upheld because of misconduct during the license year immediately preceding that for which a renewal was sought. Kaplan v. Newark, Bulletin 269, Item 6; Orsi v. Newark, Bulletin 352, Item 2. The present case, however, is to be distinguished from the cases cited for these reasons: (1) respondent, subsequent to the 1942 suspension, appears to have put the licensee to the test of future good behavior, and (2) the respondent, in its refusal to renew, appears to have relied upon a "police record" which, while evidential for the purpose of showing police experience and activity, did not of itself constitute proof of the statements therein contained.

Respondent apparently regarded the November suspension as adequate punishment for the violation for which it was imposed. While the "police record" discloses that on three dates, subsequent to February 1943, the police had occasion to visit the licensed premises, there is no evidence in the record before the Commissioner of any misconduct by the licensee, or on the licensed premises, during the period from February until the renewal time in June 1943. In the face of the affirmative testimony by the officers establishing the licensee's good conduct during this period, I can give but little weight to the naked and unproved recitals in the "police record."

There is some mention in the testimony of additional pending charges against the licensee that were admittedly never served. Under the distinctive facts in this case it would be unfair to deny a renewal merely because of unsupported pending charges where the licensee has not had an opportunity to be heard.

After weighing the arguments pro and con, I have reached the conclusion that the respondent having given the licensee a further opportunity to demonstrate his worthiness to continue in business, should not withdraw that opportunity in the absence of substantial evidence that the best interest of the public at large requires a termination of the license privilege.

The conclusion that I have reached applies merely to the renewal for the present license year. Respondent will have a full opportunity to consider the manner in which the premises have been conducted during the current year and on the basis of that conduct -- and the best interest of the public -- to determine whether a further renewal should be granted.

Accordingly, it is, on this 16th day of June, 1944,

ORDERED, that the action of the respondent be and is hereby reversed and respondent is directed to issue to the appellant a license for the present fiscal year as applied for.

Alfred E. Griswold
Commissioner.