

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

BULLETIN 445

FEBRUARY 19, 1941.

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

BULLETIN 445

FEBRUARY 19, 1941.

1. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN APPLICATION FOR SOLICITOR'S PERMIT - EMPLOYMENT TERMINATED AND PERMIT SURRENDERED - PROCEEDINGS DISMISSED - NO FUTURE PERMIT TO BE ISSUED UNTIL ELIGIBILITY IS DETERMINED.

In the Matter of Disciplinary  
Proceedings against )

WALTER FLEMING,  
68 Brunswick St.,  
Newark, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Solicitor's Permit )  
No. 3043 issued by the State )  
Commissioner of Alcoholic )  
Beverage Control. )  
----- )

Charges were preferred against the defendant-solicitor alleging that in his application for solicitor's permit he falsely stated, in violation of R. S. 33:1-25, that he had never been convicted of a crime, whereas his fingerprint returns disclosed that he had apparently been convicted of crime in Pennsylvania during the year 1932.

On January 28, 1941, subsequent to the service of charges, the solicitor's employer certified to this Department that his employment had been discontinued. Accordingly, on February 5, 1941, prior to the date fixed for hearing, pursuant to Rule 11 of State Regulations No. 12, the defendant-solicitor surrendered his permit, which was thereupon cancelled.

In view of the above facts, the instant proceeding will be dismissed.

Accordingly, it is, on this 10th day of February, 1941,

ORDERED, that the proceedings herein be and the same are hereby dismissed; and it is further

ORDERED, that no solicitor's permit be issued to this defendant in future unless and until a hearing is held to determine his eligibility for employment as a solicitor in view of his alleged conviction of crime and false statement in the instant application.

E. W. GARRETT,  
Acting Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against  
 ADELE FRISCHKNECHT,  
 539-41 - 32nd St.,  
 Union City, N. J.,  
 Holder of Plenary Retail Consumption License C-148, issued by the Board of Commissioners of the City of Union City.

CONCLUSIONS AND ORDER

Adele Frischknecht, Pro Se.  
 Robert R. Hendricks, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to a charge of selling an alcoholic beverage below Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

The Department file shows that on January 14, 1941 the bartender, an employee of the defendant-licensee, sold a quart bottle of Wilson "That's All" Whiskey to an investigator for the price of \$2.50. The minimum consumer price at which this product could be sold, lawfully, at that time, was \$2.59. Bulletin 424. The bartender who made the sale gave the investigators a signed statement wherein he acknowledged the sale, stating that it was the first time that he had sold a bottle over the bar, and that, consequently, he was unfamiliar with the resale price.

Unfamiliarity with the published Fair Trade price is, of course, no defense. Rule 4 of State Regulations No. 30 provides that the publication of summarized notice of any duly filed Fair Trade contract and price list, in the official bulletins of this Department, shall automatically charge all licensees with notice of the contents of such contracts and price lists.

The minimum penalty for sale below Fair Trade price is ten days. Since the instant offense is the defendant-licensee's first violation of record, the minimum penalty will be imposed.

By entry of the guilty plea, the Department has been saved the time and expense of proving its case. Five days of the penalty will, therefore, be remitted.

Accordingly, it is, on this 10th day of February, 1941,

ORDERED, that Plenary Retail Consumption License C-148, heretofore issued to Adele Frischknecht by the Board of Commissioners of the City of Union City, be and the same is hereby suspended for a period of five (5) days, effective February 17, 1941, at 3:00 A.M.

E. W. GARRETT,  
Acting Commissioner.

3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - SECOND DISSIMILAR OFFENSE - 13 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary )  
Proceedings against )

PAUL CARUSO and LOUIS CARUSO, )  
T/a CARUSO & SON, )  
431 Jackson Avenue, )  
Jersey City, N. J., )

ON HEARING  
CONCLUSIONS AND ORDER

Holder of Plenary Retail Distri- )  
bution License D-124, issued by )  
the Board of Commissioners of the )  
City of Jersey City. )  
- - - - - )

Paul Caruso and Louis Caruso, by Louis Caruso.  
Robert R. Hendricks, Esq., Attorney for the State Department of  
Alcoholic Beverage Control.

The defendant-licensees have pleaded guilty to a charge of selling alcoholic beverages at less than the Fair Trade price, in violation of State Regulations No. 30, Rule 6.

Reports of the Department agents who took part in the investigation show that, on the evening of November 30, 1940, an employee of the defendant-licensees sold a thirty ounce bottle of Martini & Rossi Italian Vermouth to an investigator of this Department for the price of \$1.49. The minimum consumer price at which a thirty ounce bottle of this product could be sold at that time was \$1.60. Bulletin 424.

The minimum penalty for sale below Fair Trade price is ten days.

It appears, however, that this is not the defendant-licensees' first violation of record. The Department files show that, in 1937, they were convicted by the local governing body of selling alcoholic beverages to a minor and their license suspended for two days. In view of the prior adjudication, the instant offense, even though it involves a dissimilar type of violation, calls for a penalty exceeding the minimum period of suspension prescribed for Fair Trade violations. The license, therefore, will be suspended for thirteen days instead of ten.

By entry of the plea, the Department has been saved the time and expense of proving its case. Five days of the determined penalty will, consequently, be remitted.

Accordingly, it is, on this 10th day of February, 1941,

ORDERED, that Plenary Retail Distribution License No. D-124, heretofore issued to Paul Caruso and Louis Caruso by the Board of Commissioners of the City of Jersey City, be and the same is hereby suspended for a period of eight (8) days, effective February 17, 1941, at 2:00 A.M.

E. W. GARRETT,  
Acting Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA

In the Matter of Disciplinary Proceedings against  
 )  
 )  
 HOBOKEN WINE & LIQUOR CO., INC.,  
 403 First St., )  
 Hoboken, N. J., )  
 )  
 Holder of Plenary Retail Distribution License D-10 issued by the Board of Commissioners of the City of Hoboken. )  
 )  
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CONCLUSIONS AND ORDER

Hoboken Wine & Liquor Co., Inc., by Miriam Kramer, President.  
 Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to a charge of selling an alcoholic beverage at less than the Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

The Department file discloses that, on January 6, 1941, an investigator entered the licensed premises, where he found Miriam Kramer, the President of the licensee corporation, in charge. He asked her for a half-gallon of Italian Swiss Colony Burgundy Wine, Fior Di California brand, for which he paid her the sum of seventy three cents at her specific request. The minimum consumer price at which half-gallons of Fior Di California Wine could lawfully be sold at the time of the sale was eighty cents. Bulletin 416. In a signed statement given to the investigator, the licensee explained that she "was thinking of Italian Swiss Colony Brand" when she sold the wine, and, in response to his question as to whether she knew the Fair Trade price of Fior Di California, she said, "It is eighty cents. I usually look it up in my fair trade book."

There is more than one kind of wine put out under the label of the Italian Swiss Colony - Italian Swiss Colony "Gold Medal" Wines, Italian Swiss Colony "Special" Wines, and Fior Di California Wine. Each is listed at a different minimum consumer price. This licensee charged the minimum consumer price for Italian Swiss Colony "Special" Wine. In so doing she was at least guilty of carelessness, which is no excuse. Re Blum, Bulletin 44, Item 9, and the items therein cited.

The minimum penalty for sale below Fair Trade price is ten days. Since no aggravating circumstances appear, that penalty will be imposed.

By entering a guilty plea in ample time before the date set for hearing, the Department has been saved the time and expense of proving its case, for which five days of the penalty will be remitted.

Accordingly, it is, on this 11th day of February, 1941,

ORDERED, that Plenary Retail Distribution License D-10, heretofore issued to Hoboken Wine & Liquor Co., Inc. by the Board of Commissioners of the City of Hoboken, be and the same is hereby suspended for a period of five (5) days, effective February 17, 1941, at 6:00 A.M.

E. W. GARRETT,  
 Acting Commissioner.

5. ELIGIBILITY - ISSUING WORTHLESS CHECK - RULING RECONSIDERED AND FINDING OF MORAL TURPITUDE REVERSED - APPLICANT NOT DISQUALIFIED BY SUCH CONVICTION.

Re: Case No. 358

Petitioner seeks reversal of the ruling (Re Case 358, Bulletin 438, Item 2), declaring him ineligible for employment by a liquor licensee.

He was disqualified because of his conviction of issuing a worthless check, which was held to be an aggravated offense, since it was one of a series, indicating a practice of issuing worthless checks in the general conduct of his business.

After considerable hesitation, since he was not convicted for issuing the other checks, the ruling in Re Case 230, Bulletin 272, Item 3, was deemed to apply even though in that case there were not only a series of checks, but also convictions had on each

Petitioner has at all times protested that he did not habitually issue worthless checks and that his various difficulties therewith were entirely unrelated. He gave specific explanations for each check which, if accepted, would have fully supported this contention. However, because his testimony was uncorroborated, vague in detail and open to question, all doubts were resolved against him and his explanations rejected.

At a rehearing, he produced additional evidence, later checked by an independent investigation made by this Department, which alters the entire aspect of the case.

His explanation as to three checks issued by him in December 1936, which led to his plea of non vult as to one, and a nolle pros of the other two charges, was that they were post-dated and issued in the regular course of his business to three wholesalers. While there was no direct evidence to the contrary, aside from his plea, nevertheless, in view of the previous checks which he had issued, his testimony was discounted, especially since the wholesaler upon whose complaint he was convicted had reported that petitioner conducted what may be characterized as a "fly-by-night" business.

However, this wholesaler, as well as the other two, have since been interviewed, and from their statements it appears that they dealt with petitioner solely at their various places of business and made no inquiry of him as to the nature of his business; hence the characterization as to his business methods is merely a guess and not founded on fact.

As to the previous checks (two issued in April 1936 and one in October 1933), each taken separately casts no reflection on his character, but considered in relation to each other are seemingly similar in type; that is, each issued from lack of proper business ethics.

His rejected explanation as to the April checks is that they, as well as others, were signed by him in blank and entrusted to his partner, who had charge of a branch of the business; that the partner, instead of depositing the receipts before issuing the checks to pay bills, absconded with the cash. Uncorroborated in any manner, it appeared improbable.

It has now been supplemented by a disinterested witness, who cashed one of the checks for the partner; by petitioner's brother, who obtained a complete list of the checks from the partner's wife and paid them; by the bank in which the account of the joint venture was kept and paid out on individual signature of petitioner; and by the partner himself, who, although hostile to petitioner, admitted that he had charge of the business at the locality named; that the petitioner visited the business infrequently; and that the business was prosperous.

In the light of this additional evidence, the petitioner should be given the benefit of the doubt and his explanation as to these checks accepted.

As to the October 1933 check, he stated that it was post-dated and that he made it good after the criminal charge was adjourned without date. There was no evidence to the contrary, but his story was rejected, not because of any inherent improbability, but because of the unfavorable impression created by his other testimony. Since this impression has now been removed, there appears to be no reason why his explanation as to this check should not be accepted.

If the facts now of record had been developed in the first instance, it would have been obvious that the circumstances under which the December 1936 checks were issued were the sole factor to be considered in determining whether the element of moral turpitude was involved in the conviction, and further, that they did not disclose any such element.

In the light of the facts as they now appear, the previous ruling will be reversed.

It is, therefore, on this 11th day of February, 1941, ORDERED, that applicant's disqualification because of the previous finding of moral turpitude be removed, and he is hereby declared eligible for employment by a liquor licensee.

E. W. GARRETT,  
Acting Commissioner.

6. MORAL TURPITUDE - POSSESSION OF ILLICIT STILL.

DISQUALIFICATION - APPLICATION TO LIFT - THE FIVE YEARS WHICH MUST ELAPSE BEFORE DISQUALIFICATION FOR CONVICTION OF CRIME INVOLVING MORAL TURPITUDE MAY BE REMOVED, RUN FROM TIME OF RELEASE, NOT FROM TIME OF CONVICTION.

DISQUALIFICATION - APPLICATION TO LIFT - FIVE YEARS NOT ELAPSED - APPLICATION DENIED.

In the Matter of an Application )  
to Remove Disqualification be- )  
cause of a Conviction, pursuant )  
to R. S. 33:1-31.2 (as amended )  
by Chapter 350, P.L. 1938). )

CONCLUSIONS

Case No. 112. )  
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On June 29, 1936 petitioner was convicted by confession for a violation of Internal Revenue Laws (possession of unregistered still, working in distillery and fermenting mash). He was sentenced

to serve a year and a day and was fined \$800.00, and \$500.00 penalty. He was held in jail until August 3, 1936, and then the original sentence was suspended and he was placed on two years' probation.

The record of the probation officer of the United States District Court discloses that petitioner was employed to drive a truck with still equipment to a farm where an illicit still was subsequently discovered. At the hearing, petitioner admitted that he "had an idea that whatever was going on in the place was illegal in some way". Under these circumstances, the crime involved moral turpitude. Re Case No. 267, Bulletin 313, Item 1; Re Case No. 507, Bulletin 373, Item 10.

The evidence presented at the hearing shows that petitioner has led an exemplary life since his release on parole on August 3, 1936. The statute under which these proceedings are brought provides that any person convicted of a crime involving moral turpitude may, after the lapse of five years from the date of his conviction, apply to the Commissioner for an order removing the resulting statutory disqualification; that whenever any such application is made and it appears to the satisfaction of the Commissioner that "at least five years have elapsed from the date of the conviction", that the applicant has conducted himself in a law-abiding manner "during that period" and that his association with the alcoholic beverage industry will not be contrary to the public interest, the Commissioner may, in his discretion, enter an order removing the applicant's disqualification. It is clear from the above quoted language, read together, that the Legislature intended that the probationary period during which the applicant is to be law-abiding was not to start with the date of his conviction but was to commence at the time the applicant re-enters society after his release from prison. Re Case No. 38, Bulletin 279, Item 7.

Petition to remove disqualification is, therefore, denied, with leave to file a new petition on or after August 3, 1941, which will be five years from the date of petitioner's release.

Dated: February 11, 1941.

E. W. GARRETT,  
Acting Commissioner.

7. ELIGIBILITY - GRAND LARCENY - MORAL TURPITUDE - APPLICANT DECLARED INELIGIBLE FOR EMPLOYMENT BY LIQUOR LICENSEE.

February 11, 1941

Re: Case No. 365

Applicant seeks a determination of whether his criminal record precludes him from receiving a solicitor's permit from this Department.

In 1923 he was convicted on a charge of being the proprietor of a gambling house and fined \$50.00; in 1925 he was adjudged a disorderly person and given a suspended sentence; in 1932 he was found guilty of operating an unregistered automobile and fined \$50.00; and in 1937 he pleaded guilty in a New York court to a charge of grand larceny in the second degree and was sentenced to two and a half to five years' imprisonment.

For reasons hereinafter appearing, it will be necessary to examine only into the facts surrounding applicant's last conviction for grand larceny in 1937. This conviction resulted from the taking, by applicant, of two automobiles in return for a postdated check which later proved to be worthless.

Applicant stated at the hearing that, immediately prior to his conviction in 1937, he was engaged in the used car business; that in the course of that business he obtained two cars from a Long Island dealer; that he gave a postdated check for the cars in order that he might have time to present the bills of sale to his finance company and borrow the money necessary to meet the check when it became due; that this was the customary business practice existing between the finance company and himself; that on this particular occasion the finance company, to whom he was indebted for past transactions after taking the bills of sale, "closed in" on him for his past indebtedness to them, seized all of his cars and "sold him out" that, as a result, he lost possession of the cars, was unable to meet the check when it became due, and was subsequently charged and tried for grand larceny; and that, upon the insistence of his attorney, he pleaded guilty during the course of the trial in order that he might receive a lesser sentence.

Independent investigation by this Department, however, indicates that the transaction which led to applicant's conviction was not as guileless as he stated it to have been. It appears from that investigation that applicant obtained cash from his finance company for the purpose of purchasing the two cars, but, instead of depositing the money to his account to meet the check which he was to draw to the seller, he pocketed the cash, obtained the cars by giving a postdated check to the seller, and then sold the cars and pocketed those proceeds also. That the latter version represents a more accurate picture of the incident is corroborated to some extent by the fact that applicant, during the course of the trial, abandoned his defense and entered a plea of guilty.

The crime of grand larceny ordinarily involves moral turpitude. Re Case No. 308, Bulletin 383, Item 2; Re Case No. 297, Bulletin 354, Item 7. No facts or circumstances which would free applicant's crime from the element of moral turpitude have been presented.

It is, therefore, recommended that applicant be advised that he is ineligible to hold a solicitor's permit in this State.

Robert R. Hendricks,  
Attorney.

APPROVED:

E. W. GARRETT,  
Acting Commissioner.

8. SAMPLES - TRANSPORTATION - THE TERMS AND CONDITIONS UNDER WHICH SALESMEN MAY TRANSPORT SAMPLES OF ALCOHOLIC BEVERAGES IN UNLICENSED VEHICLES.

February 14, 1941

Philip Blank, Esq.,  
Newark, N. J.

My dear Mr. Blank:

You inquire if wholesalers' salesmen may transport samples of alcoholic beverages in the salesmen's own vehicles, without the vehicles being licensed by the wholesalers, or transportation insignia affixed.

It has been ruled in Re Wilkinson, Gaddis & Co., Bulletin 100, Item 11, that it is permissible for wholesalers to equip their salesmen with four-ounce samples of alcoholic beverages for display and sample purposes, although, for the reason that retailers are prohibited by Regulations No. 23 from possessing on licensed premises containers of that size (except champagnes and sparkling wines), no such samples may be furnished or given the retailer. See also Re Frankfort Distilleries, Inc., Bulletin 367, Item 4.

It is now provided in Rule 4 of Regulations No. 34, promulgated September 5, 1940 and effective October 1, 1940 (Bulletin 422, Item 1 and Bulletin 426, Item 1), that manufacturers and wholesalers may not furnish free goods to retailers except as provided in Rule 8, pursuant to which retailers may be given a sample of not more than one pint of any brand of alcoholic beverage other than malt beverages, or if the brand is not packaged in containers of less than one quart, not more than one quart of such brand of alcoholic beverage, provided the retailer has not previously purchased the product, and further provided the sample is marked as a sample as required in Rule 8.

But neither the rulings nor Regulations No. 34 contemplates the transportation of the samples.

It is unlawful to transport alcoholic beverages except pursuant to and within the terms of a license, or as otherwise expressly authorized in the Act. R. S. 33:1-2. There is no express authorization for the transportation by salesmen of samples of alcoholic beverages without a license. It would therefore appear that transportation of samples of alcoholic beverages by salesmen in unlicensed vehicles would technically be in violation of the law.

In Rule 8 of Regulations No. 34 it is recognized that the gift of a sample, under certain conditions, may be a proper and acceptable practice.

It follows that appropriate provision must be made for the transportation of the samples.

It is not necessary, to accomplish this, that wholesalers be compelled to assume the burden of owning or leasing all salesmen's cars, thus to conform with the provisions of Regulations No. 16 for the issuance of transportation insignia. Nor is it necessary to compel salesmen to take out transportation licenses.

The statute makes no specific provision. But since the need is present and the purpose proper, pursuant to the power conferred in R. S. 33:1-39 to make such rules and regulations as may be necessary for the proper administration of the Act and specifically with respect to transportation, I now shall make such provision. It is therefore ruled that the samples contemplated to be displayed to retail licensees in accordance with Re Wilkinson, Gaddis & Co., Bulletin 100, Item 11, or furnished retail licensees in accordance with Rule 8 of Regulations No. 34, as well as samples of malt beverages not contemplated by Rule 8 aforesaid and as to which no minimum or maximum, in either size of container or quantity to be given, is now fixed, may be transported in any vehicle, provided:

- (1) The vehicle is under the control of the holder of a solicitor's permit duly issued by the State Commissioner; the vehicle is being used by the solicitor in the lawful conduct of his employer's alcoholic beverage business; the alcoholic beverages being transported in the vehicle are of the type the employer is lawfully privileged to sell; the alcoholic beverages being transported are duly marked as samples by printing or stamping in ink on the brand label the words "SAMPLE - NOT FOR SALE", in letters not less than one-half inch high and of proportionate width, in accordance with Rule 8 of Regulations No. 34 and are intended and used solely as samples; the solicitor's permit is in the possession of the solicitor during the entire time the alcoholic beverages are being so transported;

and

- (2) Not exceeding one-half barrel, or two cases containing not in excess of twenty-four quarts in all, of beer, ale or porter, and five gallons of wine, and twelve quarts of other alcoholic beverages, are transported in any such vehicle, so operated, at any one time.

Violation of the terms of this ruling, a copy of which will be served upon the holders of all manufacturing and wholesaling licenses and solicitors' permits, upon the issuance of such licenses and permits for the ensuing year and upon the issuance of each new such license or permit thereafter, will be cause for the suspension or revocation of the license, or the solicitor's permit, or both.

Very truly yours,  
E. W. GARRETT,  
Acting Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against )

HERMAN BOTWINIK, 2001 Bergenline Ave., Union City, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-5 issued by the Board of Commissioners of the City of Union City. )

Herman Botwinik, Pro Se. Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to a charge of selling an alcoholic beverage at less than the Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

The Department file discloses that on January 18, 1941 the licensee sold a quart bottle of Cella Vintage Solarized Tamper-proof Marsala Sweet Wine to an investigator of this Department for ninety cents. The minimum consumer price at which quart bottles of this product could lawfully be sold at the time was in fact ninety-eight cents. Bulletin 424. The licensee offered no excuse or explanation for the sale.

The minimum penalty for sale below Fair Trade is ten days. Re Stein, Bulletin 444, Item 7. This is the licensee's first violation of record. The minimum penalty will, therefore, be imposed.

By entering a guilty plea in ample time before the date set for hearing, the Department has been saved the time and expense of proving its case, for which five days of the penalty will be remitted.

Accordingly, it is, on this 14th day of February, 1941,

ORDERED, that Plenary Retail Distribution License D-5, heretofore issued to Herman Botwinik by the Board of Commissioners of the City of Union City, be and the same is hereby suspended for a period of five (5) days, effective February 17, 1941, at 7:00 A.M.

E. W. GARRETT, Acting Commissioner.

10. ELIGIBILITY - SOLICITOR'S PERMIT - OPERATION OF SPEAKEASY DURING PROHIBITION - POSSESSION OF FIVE BOTTLES OF ILLICIT ALCOHOLIC BEVERAGES WHILE LICENSEE SINCE REPEAL - NO AGGRAVATING CIRCUMSTANCES - NOT MORAL TURPITUDE - APPLICANT NOT DISQUALIFIED BY SUCH CONVICTIONS.

CONVICTION OF CRIME - PENDING APPEAL - CONVICTION STANDS AND DISCLOSURE IN APPLICATION FOR LICENSE OR PERMIT IS REQUIRED UNTIL REVERSED ON APPEAL.

February 14, 1941

Re: Case No. 366

In his application for solicitor's permit, applicant disclosed that in 1932 he had been convicted for violation of the Volstead Act and sentenced to fifteen days' imprisonment. Fingerprint returns disclose that, in addition, he had been convicted, in 1935, of violation of the New Jersey Alcoholic Beverage Control Law and fined \$250.00.

At the hearing it appeared that the 1932 conviction was the result of applicant's operation of a speakeasy at which he sold a drink to a Federal agent and in due course was fined \$150.00 and imprisoned for fifteen days. The violation of the Prohibition Law appears to have been merely run-of-the-mill and lacking in aggravating circumstances. Hence it does not involve moral turpitude. Re Case No. 351, Bulletin 435, Item 2.

The conviction in 1935 arose out of applicant's possession of illicit alcoholic beverages at a time when he held a retail liquor license. Investigators of this Department, in cooperation with local police, seized two quart bottles and three pint bottles, which, after analyses by the police chemist, were determined to contain illicit alcoholic beverages, whereupon applicant was arrested and charged with violation of R. S. 33:1-50 (then Control Act, Section 48). In disciplinary proceedings conducted by the license issuing authority, applicant was found guilty and sentence was suspended (Mun. Rev. 224). On the same day he was found guilty in one of our Criminal District Courts and fined \$250.00 and sentenced to sixty days in jail. The fine was paid under protest and appeal was taken to the County Court of Common Pleas, where it is still pending and undetermined.

Applicant testified that he possessed the illicit alcoholic beverages in question because "I used to have a bartender who would be on at 10:00 o'clock and he used to bring in corn liquor and drink my whiskey and then fill it up with the corn whiskey. When they walked in and picked up a couple of bottles it wasn't the right proof." Nothing in the reports of the investigators of this Department who made the investigation indicates anything to the contrary. (Seizure case 1507).

In the absence of aggravating circumstances, a single violation of the Alcoholic Beverage Control Law does not involve moral turpitude. Re Case No. 361, Bulletin 441, Item 11. No such aggravating circumstances appear to be present, and hence it is concluded that applicant's conviction of violation of the Alcoholic Beverage Law did not involve moral turpitude.

Applicant testified that he did not disclose his conviction for possession of illicit alcoholic beverages in 1935 for the reason that the conviction was on appeal and he believed it was not final until it was affirmed. However, the fact of the matter is tha

a conviction is a conviction until it is reversed, even though an appeal on that conviction has been taken and has not yet been determined.

It is recommended that applicant be advised that he is not disqualified from being employed as solicitor or otherwise by a liquor licensee in this State merely because of the convictions of crime above mentioned. He should be warned, however, that another violation of the Alcoholic Beverage Control Law will mandatorily disqualify him from future employment. R. S. 33:1-25, 26.

Although a prudent man might have disclosed the conviction in 1935 and made reference to the pending and undetermined appeal, even though he honestly believed that the conviction was not in fact a conviction by reason of the appeal, I do not believe applicant wilfully sought to conceal that conviction by failing to disclose it in his application for solicitor's permit. I am convinced that he in good faith believed, albeit erroneously, as a matter of law, that the pendency of the appeal deprived the conviction in the lower court of its efficacy. Hence I do not recommend that his solicitor's permit be withheld for any fixed period of time in penalty for his concealment of his conviction.

Emerson A. Tschupp,  
Attorney.

APPROVED:

E. W. GARRETT,  
Acting Commissioner.

11. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary )  
Proceedings against )  
JOHN KRALICH, )  
401 - 32nd St., )  
Union City, N. J., )  
Holder of Plenary Retail Con- )  
sumption License C-155, issued )  
by the Board of Commissioners )  
of the City of Union City. )  
- - - - - )

CONCLUSIONS  
AND ORDER

Milat and Gottschalk, Esqs., by Michael J. Milat, Esq., for  
the Defendant-Licensee.  
Robert R. Hendricks, Esq., Attorney for the State Department  
of Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to a charge of selling an alcoholic beverage below Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

The investigation file shows that, on January 14, 1941, an investigator of this Department, who had entered the licensed premises in the company of another agent, asked the bartender for a quart bottle of Wilson "That's All" Whiskey; that, upon receiving the bottle, the investigator tendered \$2.50 in payment and asked if that was the correct price; that the bartender replied, "Yes, that's right", took the money and rang it up on the cash register.

The minimum consumer price at which a quart bottle of this product could be sold, lawfully, at that time, was \$2.59. Bulletin 424. After the agents had disclosed their identity and had apprised the bartender of the violation, the bartender gave them a written statement wherein he admitted that he knew the correct Fair Trade price but that he had accepted the lesser amount because he "didn't want to embarrass the investigator". If this, or any other form of penny "chiseling" were a defense or a cause for mitigation, the whole Fair Trade Regulations would soon be rendered inert. Re Wardach, Bulletin 308, Item 11; Re Taraskiewicz, Bulletin 308, Item 10; Re Revallo, Bulletin 308, Item 2.

The minimum penalty for sale below Fair Trade price is ten days. Since the instant offense is the defendant-licensee's first violation of record, the minimum penalty will be imposed.

By entry of the guilty plea, the Department has been saved the time and expense of proving its case. Five days of the penalty will, therefore, be remitted.

Accordingly, it is, on the 15th day of February, 1941,

ORDERED, that Plenary Retail Consumption License C-135, heretofore issued to John Kralich by the Board of Commissioners of the City of Union City, be and the same is hereby suspended for a period of five (5) days, effective February 17, 1941, at 3:00 A.M.

E. W. GARRETT,  
Acting Commissioner.

12. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCIES IN COLOR, ACID AND SOLID CONTENT - 10 DAYS' SUSPENSION, WITH NO REMISSION FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against )

VINCENT HEURING, )  
335 Halsey St., )  
Newark, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-949 issued by the )  
Municipal Board of Alcoholic Beverage Control of the City of )  
Newark. )

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Vincent Heuring, Pro Se.  
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to charges of re-filling alcoholic beverages, in violation of R. S. 33:1-50 and R. S. 33:1-78.

The Department file discloses that on January 6, 1941 investigators of this Department inspected the licensed premises and gauged and tested the open stock consisting of 15 bottles. As a result of the preliminary field investigation, the investigators seized one quart bottle, almost full, labeled "Wilson 'That's All' Blended Whiskey", as well as a sealed, unopened bottle of the same product. Analysis by the Department chemist shows that the contents

of the open bottle varied in color, solid and acid content from the genuine sample seized for comparative purposes. The chemical analysis further discloses that the open bottle, while labeled a "blended" whiskey, in fact contained a natural colored or "straight" whiskey -- so that the seized open bottle obviously contained a complete refill.

The licensee admits possession of the beverage as charged, and further admits that it is in fact a refill. In connection with his guilty plea, he states that the violation was committed by a bartender who is no longer in his employ; that he personally had no knowledge whatsoever of the wrongdoing; and that nevertheless he understands that he is liable for the acts of his agent. Since the seized liquor does not conform to label specifications, it constitutes an illicit alcoholic beverage. Re Haney, Bulletin 304, Item 13. Its mere possession on licensed premises violates the Alcoholic Beverage Law. R. S. 33:1-50. Moreover, the beverage is an admitted refill. Refilling of an alcoholic beverage from one container to another constitutes bottling within the meaning of R. S. 33:1-78. Regardless of personal innocence, the licensee is strictly accountable for his liquor stock. Re Perna, Bulletin 442, Item 6.

This is the licensee's first offense of any kind. His license will, therefore, be suspended for a period of ten days. Re Perna, supra.

Accordingly, it is, on this 17th day of February, 1941,

ORDERED, that Plenary Retail Consumption License C-949, heretofore issued to Vincent Heuring by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of ten (10) days, effective February 24, 1941, at 3:00 A.M.

E. W. GARRETT,  
Acting Commissioner.

13. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN APPLICATION FOR SOLICITOR'S PERMIT - PERMITTEE DISQUALIFIED BY CONVICTION OF CRIME INVOLVING MORAL TURPITUDE IN OPERATION OF ILLEGAL BREWERY - PERMIT REVOKED.

In the Matter of Disciplinary )  
Proceedings against )

ALLEN J. FETTERMAN,  
East Greenville, Pa., )

CONCLUSIONS  
AND ORDER

Holder of Solicitor's )  
Permit No. 2730. )

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Richard E. Silberman, Esq., Attorney for the State Department  
of Alcoholic Beverage Control.

Allen J. Fetterman, Pro Se.

The defendant solicitor is charged with denying in his application for solicitor's permit that he had ever been convicted of crime when in fact he had been convicted of conspiracy to violate the National Prohibition Act.

At the hearing, it appeared that in 1930 defendant solicitor owned and operated a brewery at Steelton, Dauphin County, Pa.; that he was arrested along with the staff of the brewery comprising an engineer, a fireman, a general manager, a bookkeeper and the workmen who were actually making the beer, in a raid by the Pennsylvania State Motor Police in cooperation with Pennsylvania Alcohol Permit Inspectors, in consequence of which defendant solicitor was indicted for conspiracy in the operation of an illegal brewery, and upon his guilty plea was fined \$1200.00 and costs and sentenced to 2-1/2 years' imprisonment in the Dauphin County Jail.

Defendant solicitor explains his failure to disclose his conviction in his application by asserting that he did not consider that he had been convicted of any crime for the reason that (1) the conviction occurred in Pennsylvania and he thought that applicants for permits in New Jersey need disclose only convictions in New Jersey, and (2) Prohibition violations were "wiped out" by repeal of the Eighteenth Amendment.

Conviction of conspiracy to violate the National Prohibition Act may or may not involve moral turpitude. Case No. 202, Bulletin 225, Item 5; Case No. 46, Bulletin 168, Item 7. Cf. Case No. 360, Bulletin 441, Item 7; Case No. 267, Bulletin 313, Item 1. Were I to conclude that the instant conviction did not involve moral turpitude, I would merely suspend the permit in punishment of solicitor's false statement. Cf. Case No. 202, *supra*. However, I believe that since defendant solicitor appears to have been the key figure in the conspiracy to operate the brewery, the conviction does involve moral turpitude. Hence he is ineligible for license or employment by a liquor licensee in New Jersey. R. S. 33:1-25, 26. The permit must therefore, be revoked.

Accordingly, it is, on this 17th day of February, 1941,

ORDERED, that solicitor's permit No. 2730, heretofore issued to Allen J. Fetterman, be and the same is hereby revoked, effective immediately.

*E. W. Jarrett*

Acting Commissioner.