

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

BULLETIN 679

OCTOBER 8, 1945

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - PURCHASE OF ALCOHOLIC BEVERAGES BY RETAIL LICENSEE OTHER THAN FROM A NEW JERSEY MANUFACTURER OR WHOLESALER, IN VIOLATION OF RULE 15 OF STATE REGULATIONS NO. 20 - STORAGE OF ALCOHOLIC BEVERAGES OFF THE LICENSED PREMISES, IN VIOLATION OF R.S. 33:1-2 - AGGRAVATING CIRCUMSTANCES - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 120 DAYS.

In the Matter of Disciplinary Proceedings against)

JOHN HILL & CYRIL HILL)
N/E Cor. Harding Highway)
and DuPont Road)
Upper Penns Neck Township)
P.O. Carney's Point, N. J.,)

CONCLUSIONS
AND ORDER

-----)
Holders of Plenary Retail Consumption License C-7 for the fiscal years 1944-45 and 1945-46, issued by the Township Committee of the Township of Upper Penns Neck.)
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Philip L. Lipman, Esq., Attorney for Defendant-licensees.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendants were served with charges alleging that (1) and (2) they sold and served alcoholic beverages to two minors, and (3), (4) and (5) they purchased alcoholic beverages from an unlicensed individual and from other retail licensees for the purpose of resale, and stored such alcoholic beverages off their licensed premises.

Charges (1) and (2), to which the defendants pleaded non vult, involve the service by the defendants' waitress, on May 12, 1945, of four glasses of beer to each of two minors, one of whom was sixteen, and the other eighteen years of age.

As to (3), (4) and (5): After observing the service to the two minors and identifying themselves, the ABC agents made a search of the entire building housing the licensed premises. On the second floor, which is not part of the licensed premises, the agents found, in the bedroom of John Hill, a quantity of liquor which they seized. To the resultant charges, the defendants have pleaded not guilty. Forfeiture proceedings of the liquor are presently pending and will be separately determined.

At the time of the seizure, John Hill gave the agents a written statement concerning the seized liquor (Exhibit S-1) in which, among other things, he stated that he had purchased two cases of Seagram's V. O. whiskey from an unlicensed individual, and that three bottles of Scotch whisky and one bottle of rye (Canadian Club) he had purchased from other retail licensees. He refused, however, to divulge the identity of the individual or the licensees.

To one of the agents John Hill admitted that, when he ran short of whiskey in the tavern, he used the whiskey, which was stored in his bedroom, for resale at the licensed premises.

At the hearing, John Hill continued to be adamant about disclosing the names of the persons from whom the seized liquor had been purchased. He insisted that the sale of the two cases of Seagram's whiskey was not actually made by the individual but that the latter had merely acted as his agent in the purchase of that whiskey from an undisclosed retail licensee. It is quite significant, however, that the serial numbers on both cases were obliterated, so that it is not possible to trace the retailer to whom they were originally sold. In any event, whether the liquor was purchased from an unlicensed individual or some other retail licensee, the defendants are guilty of a violation of the law. See Rule 15 of State Regulations No. 20.

John Hill also attempted to justify his possession of the liquor by testifying that it was intended for his personal use. Since he made no such claim when giving his written statement, and since he verbally admitted to an ABC agent that he used such liquor in his tavern, I cannot now accept as true his assertion that all of the liquor was his personal property and not intended for resale at the tavern.

The purchase of alcoholic beverages from unlawful sources is a serious violation. "Practices of this kind tend to disrupt the orderly traffic of alcoholic beverages in the state and anything less than rigorous enforcement would result in the loss of control and supervision over this highly important phase of liquor administration." See Re Jack and Jean Holding Corp., Bulletin 605, Item 5, where a forty-day penalty was imposed for purchasing liquor from a non-licensee and from retail licensees. In the case at bar there is the additional charge of unlawful storage off the licensed premises.

In addition, the record of these defendants contains a ten-day suspension, during August 1944, upon their admission that they had theretofore caused their license to be held on their behalf by the wife of Cyril Hill. See Bulletin 630, Item 10.

I have given careful consideration to the extent of the penalty to be herein imposed. The violation involved in the first two charges is aggravated by the extreme youthfulness of one of the minors. The remaining charges are concerned with a particularly serious offense and includes the sinister aspect of the defaced serial numbers on the two cartons containing the Seagram's whiskey. John Hill's obstinate concealment of the names of the persons from whom the unlawful purchases were made handicapped the Department of Alcoholic Beverage Control in its investigation. Under the circumstances, a serious question is raised with respect to whether these defendants should be permitted to continue in the liquor business. Projected against the background of the previous violation, it is concluded that the license must now stand suspended for a period of one hundred and twenty days.

Accordingly, it is, on this 10th day of September, 1945,

ORDERED, that Plenary Retail Consumption License C-7, issued for the current fiscal year by the Township Committee of the Township of Upper Penns Neck to John Hill and Cyril Hill, for premises on N/E Cor. Harding Highway and DuPont Road, Upper Penns Neck Township, be and the same is hereby suspended for a period of one hundred and twenty (120) days, commencing at 1:00 a.m. September 14, 1945, and terminating at 1:00 a.m. January 12, 1946.

ALFRED E. DRISCOLL
Commissioner.

- 2. DISCIPLINARY PROCEEDINGS - FRONT - AIDING AND ABETTING NON-LICENSEE (ALIEN) TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - FALSE STATEMENTS IN LICENSE APPLICATION CONCEALING MATERIAL FACTS, IN VIOLATION OF R. S. 33:1-25 - AGGRAVATING CIRCUMSTANCES - LICENSE REVOKED.

DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION FOR EMPLOYMENT PERMIT CONCEALING MATERIAL FACT - PERMITTEE (NON-CITIZEN) EXERCISED THE RIGHTS AND PRIVILEGES OF LICENSE ISSUED TO ANOTHER - EMPLOYMENT PERMIT REVOKED.

In the Matter of Disciplinary Proceedings against
 JOSEPH D'ALBA
 Locktown-Kingwood Road
 Kingwood Township
 P.O. Flemington, N. J.,

Holder of Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Kingwood

and

ERNEST CAMPANELLA
 Locktown-Kingwood Road
 Flemington R.D. 2, N.J.,
 Holder of Employment Permit No. 2387, issued by the State Commissioner of Alcoholic Beverage Control.

CONCLUSIONS AND ORDERS

Joseph D'Alba }
 Ernest Campanella } Pro se.
 Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee pleaded guilty to charges alleging that (1) ever since July 1, 1945 he permitted Ernest Campanella to exercise the rights and privileges of his license, (2) he falsely denied in his license application that anyone else was interested in the license applied for, whereas Ernest Campanella did have such interest, (3) he falsely stated in his license application that he was a resident of the State of New Jersey, and (4) as an alternative to Charge 3, he falsely denied in his license application that he had moved to the State of New Jersey during the twelve months preceding the submission of his application.

The defendant-licensee also admitted that he was not a resident of the State of New Jersey and that the license was therefore improperly issued to him, as set forth in the notice requiring him to show cause why the license should not be cancelled.

The defendant-permittee pleaded guilty to a charge alleging that, in his application for permit, he falsely concealed his interest in the license issued to the defendant-licensee.

It appears that Ernest Campanella, the defendant-permittee, is a non-citizen and thus ineligible to hold a liquor license in his own name. R. S. 33:1-25. Despite this fact, he has been the real

owner of a license for the premises in question for the past seven years. This was accomplished by causing the various licenses for that period to be nominally issued in the names of four different individuals, of which the last is the present defendant-licensee.

Campanella was particularly unfortunate in the choice of his last "front" since the latter is a non-resident and also disqualified under the Alcoholic Beverage Law from holding a liquor license. R. S. 33:1-25.

Since the license was improvidently issued to a disqualified person, it would normally be cancelled. In view of the repeated "front" offenses, however, I shall, in order to effectuate a forceful penalty, direct that the license be revoked outright. This will prevent the licensee from holding any type of liquor license in this state for a two-year period. R. S. 33:1-31.

The same directive will be made with respect to the employment permit held by the undisclosed principal.

Accordingly, it is, on this 11th day of September, 1945,

ORDERED, that Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Kingwood to Joseph D'Alba, for premises on Locktown-Kingwood Road, Kingwood Township, be and the same is hereby revoked, effective immediately; and it is further

ORDERED, that Employment Permit No. 2387, issued to Ernest Campanella by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

3. DISCIPLINARY PROCEEDINGS - ORDER MODIFYING PREVIOUS REVOCATION ORDER TO SUSPENSION FOR BALANCE OF TERM.

In the Matter of Disciplinary Proceedings against)

LEONTYNA JANOWSKI)
145 Whitehead Avenue)
South River, N. J.,)

ON PETITION
O R D E R

Holder of Plenary Retail Consumption License C-4 for the fiscal year 1944-45, issued by the Mayor and Council of the Borough of South River.)

Vincent Schultz, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

This matter comes before me on the application of Leontyna Janowski for reconsideration of my order dated July 5, 1945 revoking Plenary Retail Consumption License C-4 for the fiscal year 1944-45, issued by the Mayor and Council of the Borough of South River to petitioner, Leontyna Janowski, for premises 145 Whitehead Avenue, South River.

The order of revocation followed a guilty plea entered by Leontyna Janowski to a charge alleging that, on May 7, 1945, she possessed on her licensed premises seven bottles containing illicit alcoholic beverages, in violation of R. S. 33:1-50. Re Janowski, Bulletin 673, Item 9.

It appears that, prior to the institution of the disciplinary proceedings, the petitioner herein surrendered her license on June 4, 1945, and that she has not held a liquor license since that time.

The verified petition herein recites that petitioner and her husband, Michael Janowski, reside at 79 Whitehead Avenue, South River, at which address her husband conducts a tavern. The petition further recites that petitioner's husband is a man of advanced age; that the revenue realized from his business does not warrant the hiring of any help, and that the petitioner desires to relieve her husband occasionally in the conduct of his business. It is clear that, unless relief is granted, she may not assist her husband because the revocation of her license renders her ineligible to hold a license or be employed by or connected in any business capacity with a licensee for a period of two years after the revocation. R. S. 33:1-31; R. S. 33:1-26.

The order heretofore entered admittedly is severe and, under the circumstances, apparently works a hardship not only upon the petitioner but also upon her husband. I believe that petitioner has learned her lesson. Since she has been barred from working in her husband's premises for more than two months last past, I shall grant the relief which she seeks in order that she may be hereafter employed on licensed premises.

Accordingly, on this 12th day of September, 1945, the Order heretofore entered on July 5, 1945 revoking Plenary Retail Consumption License C-4 for the fiscal year 1944-45, issued by the Mayor and Council of the Borough of South River to Leontyna Janowski for premises 145 Whitehead Avenue, South River, be and the same is hereby ordered modified to a suspension for the balance of the term of such license, which expired on June 30, 1945.

ALFRED E. DRISCOLL
Commissioner.

- 4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES FOR CONSUMPTION OFF THE LICENSED PREMISES IN OTHER THAN ORIGINAL CONTAINERS, IN VIOLATION OF R. S. 33:1-2 - REFILLING WINE BOTTLES, IN VIOLATION OF R. S. 33:1-78 - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM, IN VIOLATION OF RULE 6 OF STATE REGULATIONS NO. 30 - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
 ITALIAN WORKMEN'S COOPERATIVE)
 OF WEST NEW YORK, INC.)
 6018-6022 Hudson Avenue)
 West New York, N. J.,)
 Holder of Plenary Retail Consumption License C-54, issued by the)
 Board of Commissioners of the)
 Town of West New York.)
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CONCLUSIONS AND ORDER

Theodore Cohen, Esq., Attorney for Defendant-licensee.
 Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to charges alleging that it (1) sold bottles of wine for consumption off its licensed premises in other than original containers, (2) refilled such bottles for the purpose of sale, and (3) sold a gallon jug of wine below the minimum consumer price.

On each of two successive days, July 16 and 17, 1945, the defendant's bartender sold an ABC agent a bottle of wine which the bartender had refilled from a tax-paid container.

On the latter date, the bartender also sold the agent an original gallon jug of Opici burgundy wine for the sum of \$2.75, or fifty-five cents below the then established Fair Trade price. See Bulletin 651, page 5.

The offense covered by the first two charges calls for a ten-day penalty. Re Sodano, Bulletin 598, Item 2. A similar penalty will be imposed for the Fair Trade violation. Re Heller, Bulletin 677, Item 6. Five days will be remitted for the plea, leaving a net suspension of fifteen days.

It is noted that the defendant suffered a suspension of its license during November 1938 after it had pleaded guilty to selling alcoholic beverages and permitting patrons on its licensed premises during prohibited hours. Bulletin 283, Item 4. Because of the lapse of almost seven years, the present offenses are not considered aggravated thereby.

Accordingly, it is, on this 12th day of September, 1945,

ORDERED, that Plenary Retail Consumption License C-54, issued by the Board of Commissioners of the Town of West New York to Italian Workmen's Cooperative of West New York, Inc., for premises 6018-6022 Hudson Avenue, West New York, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 3:00 a.m. September 17, 1945, and terminating at 3:00 a.m. October 2, 1945.

ALFRED E. DRISCOLL
 Commissioner.

5. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN APPLICATION FOR CORPORATE LICENSE, CONCEALING MATERIAL FACT (UNDISCLOSED INTEREST OF PERSON WITH CRIMINAL RECORD) - PERMITTING GAMBLING ON LICENSED PREMISES - AGGRAVATING CIRCUMSTANCES - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against

MUSIC BOX, INC.
181 Ellison Street
Paterson 1, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-210 for the 1944-45 and 1945-46 fiscal years, issued by the Board of Alcoholic Beverage Control of the City of Paterson.

J. David Newman, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded not guilty to a charge alleging that it falsified its license application by concealing the fact that Dominick War had a beneficial interest in the shares of stock issued by it.

The defendant corporation came into existence on February 28, 1945, when its certificate of incorporation was filed with the Secretary of State. In that certificate (Exhibit S-1) it was set forth that the corporation would commence business with the issuance of fifteen shares of stock, equally divided among John War, his wife Margaret, and Dominick War, brother of John War.

The defendant's application for license (Exhibit S-2) was filed with the local issuing authority on March 8, 1945. Therein its stockholders are listed as John and Margaret War, each the holder of seven shares, and Dorothy War, wife of Dominick War, the holder of one share.

On March 13, 1945 an ABC agent interviewed John War, the president of the corporate applicant. As a result, John War gave the agent a written statement (Exhibit S-3) in which, among other things, the following question and answer appear:

"Q Is the Music Box, Inc. in reality a partnership between yourself and Dominick War?

"A Yes it is really a partnership between myself and Dominick War. We formed the corporation to protect ourselves."

In that statement John War also admitted that for a period of several weeks after the agreement to purchase the tavern had been signed, the then owner, Cornelius Ward, and Dominick War, had operated the tavern and had equally divided the profits of the business.

The obvious reason for the failure to disclose Dominick War's interest is that he has been convicted of a disqualifying crime and is thus ineligible to hold any interest in a liquor license in this state. R. S. 33:1-25; see also Case No. 425, Bulletin 679, Item 6, where I denied Dominick War's application for lifting of such disqualification.

The defendant's application for license was granted by the local issuing authority on April 11, 1945. Up to that time, no certificates of stock had been issued and the minute book of the corporation contained only blank pages. In fact, the stock certificates were not issued until the latter part of April or the early part of May, 1945. It was then, for the first time, that three certificates were issued in the amounts and to the persons as listed in the license application (Exhibit S-2). Curiously enough, however, these certificates are each dated March 5, 1945, a date three days before the application for license was filed. This is explained by the attorney who effected the incorporation (not counsel of record) by the fact that a meeting of the stockholders took place on March 5, 1945. When asked whether he had any instructions regarding the division of the stock, he replied in the negative. He testified that he "just seized the name and number of shares out of the air." Although apparently aware of Dominick War's ineligibility, the attorney nevertheless listed him in the certificate of incorporation as the holder of five shares of stock and then several months later issued the predated certificates showing an entirely different division of the shares -- and all this without consultation with any of the interested parties!

To add further to the confusion, it is necessary to state that the ABC agent had a second interview with John War on May 12, 1945, or three weeks after the license had been transferred to the corporation. On this occasion, he informed the agent that he owned a half interest in the corporation and the balance, although financed by Dominick War, was owned by the latter's wife. It cannot be emphasized too strongly that John War is the president of the corporate licensee and that his inconsistent statements were made long after the application was filed and the meeting of the stockholders allegedly held.

In the face of the admissions made by the defendant's president, his mere categorical denial at the hearing, as well as that of Dominick War, that the latter has no interest in the corporation, are not entitled to credence. I find that Dominick War, disqualified by reason of his criminal record, held an undisclosed interest in the corporate defendant as charged.

The evil of having such a disqualified person associated with the alcoholic beverage industry is well demonstrated by what occurred on the licensed premises after the license was transferred to the defendant. On August 14th, and again on August 15, 1945, an ABC agent placed a horse bet with John War, who was acting as bartender on both occasions. To the resultant charges of permitting bookmaking on the licensed premises, the defendant entered a guilty plea. John War, who was arrested, pleaded guilty to a criminal complaint of maintaining a disorderly house (gambling) under the local ordinance.

It might further be observed that, on March 4, 1945, during the period that the then licensee and Dominick War were unlawfully "dividing the profits", the latter participated in a violation of the war emergency curfew regulation (State Regulations No. 40) by acting as a bartender in the service of alcoholic beverages after midnight to nineteen patrons. See Re Ward, Bulletin 659, Item 1.

It is readily apparent that the only appropriate penalty commensurate with the nature of the offenses committed by this defendant is an outright revocation of the license. Such will be the order.

Accordingly, it is, on this 17th day of September, 1945,

ORDERED, that Plenary Retail Consumption License C-210, issued for the current fiscal year by the Board of Alcoholic Beverage Control of the City of Paterson to Music Box, Inc., for premises 181 Ellison Street, Paterson, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

6. MORAL TURPITUDE - THE CRIME OF UNLAWFUL REGISTRATION (FALSE SWEARING) FOUND TO INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS NOT HAVING BEEN SHOWN, APPLICATION TO LIFT DENIED.

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. 425.
-----)

BY THE COMMISSIONER:

Applicant was convicted in March, 1924, of the crime of unlawful registration upon an indictment containing two separate counts charging the applicant with having voted illegally. The gravamen of the offense in both counts was the false swearing by the applicant of his proper voting address. This crime involves the element of moral turpitude (Re Case No. 79, Bulletin 399, Item 3) and disqualifies the applicant from holding any interest in a liquor business or being employed upon such licensed premises in this state. R.S. 33:1-25,26.

It is, therefore, unnecessary to pass upon applicant's further convictions in December, 1928, and again in December, 1935, of the crime of operating a gambling house. A fourth conviction occurred in December, 1937, when he was charged with being a disorderly person as a result of his arrest as an inmate of a gambling house.

In a disciplinary proceeding just decided, it was found that applicant's interest in a licensed business was falsely concealed, and that such licensed premises were used for gambling (horse betting). Re Music Box, Inc., Bulletin 679, Item 5. It is there also indicated that applicant was an active participant in a violation of the State Regulations covering curfew hours during the recent emergent period, and that the violation occurred while applicant was unlawfully sharing the profits of the tavern business with the licensee. See also Re Ward, Bulletin 659, Item 1. In addition, the applicant's purported explanation of his connection with these licensed premises is evasive, contradictory and false.

Under the circumstances, and irrespective of any testimony of character witnesses, the relief prayed for in applicant's petition to lift his statutory disqualification must be denied. It is incumbent under the statute (R. S. 33:1-31.2), in order for me to act favorably upon such petition, that it satisfactorily appear that the applicant, for at least five years last past, "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 public interest." No such finding may here be made on the recited facts.

The prayer of the petitioner is denied.

ALFRED E. DRISCOLL
Commissioner.

Dated: September 17, 1945.

7. APPELLATE DECISIONS - FEILER v. POMPTON LAKES

WILLIAM K. FEILER,)

Appellant,)

-vs-)

ON APPEAL
CONCLUSIONS AND ORDER

BOROUGH COUNCIL OF THE)

BOROUGH OF POMPTON LAKES)

and JOHN S. HAMEL, trading)

as LAKESIDE HOTEL,)

Respondents)

Watson, Hengeveld & Miller, Esqs., by Edward L. Watson, Esq.,
Attorneys for Appellant.

John McNaughton, Esq., Attorney for Respondent Borough Council.

William F. Johnson, Esq., Attorney for Respondent John S. Hamel.

BY THE COMMISSIONER:

This is an appeal from the action of respondent, Borough Council, whereby it denied a plenary retail consumption license to appellant for premises known as 410 Lakeside Avenue, Pompton Lakes, and granted a plenary retail consumption license to respondent, John S. Hamel, for the same premises.

The land and building at 410 Lakeside Avenue are owned by appellant's sister, who, according to the testimony, has given to appellant a power-of-attorney to manage the property in her behalf. Pursuant to this arrangement, William K. Feiler, in 1941, rented said premises to respondent John S. Hamel by a written lease, at a rental of \$175.00 per month. This lease, which was not produced, is said to have contained an agreement that any license obtained by John S. Hamel was to be transferred, after the expiration of the lease, to William K. Feiler. This agreement was void because it subjected the license to the control of a person other than the licensee. See Lachow v. Alper, 130 N. J. Eq. 588.

On June 5, 1942, William K. Feiler and John Hamel and Mrs. J. Hamel entered into a written lease for the same premises for the term of one year, to commence May 1, 1942, at the same rental. The second lease contained the following agreement between the parties:

"AND it is expressly understood and agreed and it is specifically made a part of the consideration for this lease that the party of the second part is to take out the plenary liquor license for the year commencing July 1st, 1942 and ending June 30, 1943 in the name of John S. Hamel and William K. Feiler jointly."

Apparently in pursuance of this agreement, the plenary retail consumption license for the premises in question was applied for and obtained in the names of John S. Hamel and William K. Feiler for each of the fiscal years beginning July 1, 1942, July 1, 1943 and July 1, 1944.

At the hearing herein appellant testified that he never had anything to do with the operation of the licensed business, and that his sole interest was to collect the rent for his sister and to see that the license stayed under his name. It is apparent that, for a period of approximately four years, the licensed business at the premises in question was owned and operated by John S. Hamel. Under the circumstances, the agreement in the second lease, whereby William K. Feiler obtained control over the license, was likewise void for the reason heretofore stated.

In May 1945 appellant served upon John S. Hamel one month's notice to vacate the hotel and premises in question. Thereafter appellant instituted proceedings in a District Court to dispossess the Hamels and, upon an application made to a Justice of the Supreme Court by the Hamels, this proceeding was removed to a Circuit Court, where it is now pending and undecided. The net result of these proceedings was that, when the two separate applications filed by Feiler and Hamel were considered by the Borough Council, and on July 1, 1945, respondent Hamel was still in actual possession of the licensed premises pursuant to an entry which was lawful ab initio.

The case of Rittenger v. Bordentown, Bulletin 547, Item 10, appears to be directly in point. In that case it was said:

"The statute (R. S. 33:1-1 et seq.) does not contain any provision covering the question of title.

"Far more important than the question of title and the interest of the applicant therein is the question of the applicant's authority over, and his ability to control, the premises whereon the license privileges are to be exercised. Local issuing authorities are required, when passing upon applications for licenses, to give studious consideration to the ability and the authority of the applicant to control the premises whereon the license privilege is sought to be exercised. The right of a licensee to exercise the license privilege thereon terminates coincidental with his loss of possession and control over the 'licensed premises.'

"Issuing authorities, in the performance of their duties, are not required to determine disputes respecting title, possession, or rights therein and thereto. In the exercise of their sound judgment, they may issue a license in those cases where they find that the applicant has a colorable right to possession and complete control of the premises."

Since respondent Hamel had a colorable right to possession and complete control of the premises when the applications were considered, and also on July 1, 1945, respondent Borough Council was justified in issuing the license to him. It follows, therefore, that respondent Borough Council was also justified in denying the application filed by appellant.

For the reasons aforesaid, I shall affirm the action of respondent Borough Council.

Accordingly, it is, on this 25th day of September, 1945,

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

ALFRED E. DRISCOLL
Commissioner.

8. FAIR TRADE - NOTICE OF SUPPLEMENTAL PUBLICATION.

September 25, 1945

In order to afford manufacturers and wholesalers an opportunity to list new items or changes in old items, it is my decision that a supplemental publication of minimum resale prices, pursuant to Fair Trade Regulations No. 30, shall become effective on October 22, 1945.

Listings must be filed at the offices of this Department not later than Tuesday, October 2, 1945.

It has been noted that prices for many brands and types appearing in the September and October official wholesale price supplements represent substantial reductions to retailers. It is important that these reductions shall be reflected in the price listings for the items in the forthcoming minimum consumer price supplement. Withdrawals of items from Fair Trade publications will not be countenanced unless listers desiring to make such withdrawals can establish to my satisfaction that the items affected no longer remain in the inventory of any retailer and will not be available in New Jersey in the future.

Notification of the proportionate share of the aggregate expense involved will be made to participating companies as soon as the pamphlet price list is published and mailed to all retail licensees.

ALFRED E. DRISCOLL
Commissioner.

9. DISCIPLINARY PROCEEDINGS - EMPLOYMENT OF MINORS IN VIOLATION OF R. S. 33:1-26 AND RULES 3 AND 6 OF STATE REGULATIONS NO. 13 - LICENSE SUSPENDED FOR PERIOD OF 10 DAYS, LESS 5 FOR GUILTY PLEA.

EMPLOYMENT PERMIT SUSPENDED FOR PERIOD OF 10 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

ARENA BOWLING ACADEMY, INC.)
T/a ARENA BOWLING ACAD'Y)
308 Baldwin Avenue)
Jersey City 6, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-204, issued by the Board of Commissioners of the City of Jersey City; and Special Permit "P No. 1580", issued by the State Commissioner of Alcoholic Beverage Control.

Morris E. Barison, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant, holder of a plenary retail consumption license and also a special permit authorizing the employment of minors sixteen years or older as pin boys, pleads non vult to employing a fifteen-year-old minor as a pin boy, in violation of R. S. 33:1-26 and Rule 3 of State Regulations No. 13, and also employing eight

younger minors as such pin boys, in violation of R. S. 33:1-26 and Rules 3 and 6 of State Regulations No. 13.

In the comparable case of Re Kneble, Bulletin 649, Item 8, it was stated:

"The purpose of the regulations above cited is to keep minors under sixteen years of age off premises where intoxicating liquors are sold and, further, to restrict the employment of minors sixteen years of age or older in such places and in such positions.

"The statute and regulations serve meritorious purposes. Licensee has seen fit to flout both. The difficulty of securing employees of proper age is no excuse."

As in that case, the license and permit will each be suspended for a period of ten days, with remission of five days for the plea, leaving a net suspension of the permit and license of five days.

Accordingly, it is, on this 27th day of September, 1945,

ORDERED, that Plenary Retail Consumption License C-204, issued by the Board of Commissioners of the City of Jersey City to Arena Bowling Academy, Inc., t/a Arena Bowling Acad'y, for premises 308 Baldwin Avenue, Jersey City, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 a.m. October 1, 1945, and terminating at 2:00 a.m. October 6, 1945; and it is further

ORDERED, that Special Permit "P No. 1580", issued by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 a.m. October 1, 1945, and terminating at 2:00 a.m. October 6, 1945.

ALFRED E. DRISCOLL
Commissioner.

10. ACTIVITY REPORT FOR SEPTEMBER, 1945

To: Alfred E. Driscoll, Commissioner

<u>ARRESTS:</u>	Licensees and employees - - - - -	4	Bootleggers - - - - -	12	
	Total number of persons arrested - - - - -				16
<u>SEIZURES:</u>	Still - 1 to 50 gallons daily capacity - - - - -			0	
	50 gallons and more daily capacity - - - - -			0	
	Total number of stills seized - - - - -				0
	Mash - gallons - - - - -				0
	Motor vehicles - Trucks - - - - -			0	
	Passenger cars - - - - -			3	
	Total number of motor vehicles seized - - - - -				3
	Alcohol - gallons - - - - -				0
	Brewed malt alcoholic beverages (beer, ale, etc.) - gallons - - - - -				60.61
	Wine - gallons - - - - -				7.80
	Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons - - - - -				15.27

<u>RETAIL LICENSEES:</u>					
	Total number of premises inspected - - - - -				980
	Total number of bottles gauged - - - - -				10,114
	Total number of premises where violations were found - - - - -				60
	Total number of violations found - - - - -				74
	Type of violations found:				
	Illicit liquor - - - - -	20	Improper beer tap markers - - - - -	1	
	Gambling devices - - - - -	0	Stock disposal permits necessary - - - - -	9	
	Prohibited signs - - - - -	0	No sign denoting legal sale hours - - - - -		
	Unqualified employees - - - - -	20	off-premises consumption - - - - -	5	
	"Fronts" (concealed ownership) - - - - -	4	Other types of violations - - - - -	15	

<u>STATE LICENSEES:</u>					
	Premises inspected - - - - -				21
	License applications investigated - - - - -				14

<u>COMPLAINTS:</u>					
	Investigated, reviewed and closed - - - - -				275
	Investigation assigned, not yet completed - - - - -				214

<u>LABORATORY:</u>					
	Analyses made - - - - -				140
	"Shake-up" cases (alcohol, water and artificial coloring) - - - - -				1
	Liquor found to be not genuine as labeled - - - - -				38

<u>IDENTIFICATION BUREAU:</u>					
	Criminal fingerprint identifications made - - - - -				15
	Persons fingerprinted for non-criminal purposes - - - - -				215
	Identification contacts with other enforcement agencies - - - - -				197
	Motor vehicle identifications via N. J. State Police Teletype - - - - -				11

<u>DISCIPLINARY PROCEEDINGS INSTITUTED:</u>					
	Cases transmitted to municipalities - - - - -				17
	Violations involved:				
	Improper beer tap markers - - - - -	5	Hostesses - - - - -	1	
	Bookmaking on premises - - - - -	3	Sale outside scope of license - - - - -	1	
	Sale during prohibited hours - - - - -	3	Sale to intoxicated persons - - - - -	1	
	Sale to minors - - - - -	3	Sale to non-members by clubs - - - - -	1	
	Brawls - - - - -	1			
	Cases instituted by Department - - - - -				29
	Violations involved:				
	Illicit liquor - - - - -	22	Sale during prohibited hours - - - - -	1	
	Sale outside scope of license - - - - -	3	Sale to intoxicated persons - - - - -	1	
	Fraud in application - - - - -	1	Sale to minors - - - - -	1	
	Hindering investigation - - - - -	1	Sale under Fair Trade price - - - - -	1	
	Purchase from improper source - - - - -	1	Unqualified employee - - - - -	1	
	Cases brought by municipalities on own initiative and reported to Department - - - - -				10
	Violations involved:				
	Sale to minors - - - - -	3	Gambling - - - - -	1	
	Brawls - - - - -	2	Serving women on premises - - - - -	1	
	Sale during prohibited hours - - - - -	2	Unqualified employee - - - - -	1	
	Fraud in application - - - - -	1			

<u>HEARINGS HELD AT DEPARTMENT:</u>					
	Total number of hearings held - - - - -				35
	Appeals - - - - -	8	Seizures - - - - -	4	
	Disciplinary proceedings - - - - -	13	Application for license - - - - -	2	
	Eligibility - - - - -	8			

<u>PERMITS ISSUED:</u>					
	Total number of permits issued - - - - -				826
	Unqualified employees - - - - -			139	
	Solicitors - - - - -			130	
	Social affairs - - - - -			192	
	Home manufacture of wine - - - - -			52	
	Disposal of alcoholic beverages - - - - -			215	
	Miscellaneous permits - - - - -			98	

Respectfully submitted,

CHARLES BASILE
SR. INSPECTOR

11. DISCIPLINARY PROCEEDINGS - FALSE ANSWERS IN APPLICATION FOR LICENSE CONCEALING MATERIAL FACTS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR PERIOD OF 40 DAYS.

In the Matter of Disciplinary Proceedings against)

THE SIROCCO, INC.)
T/a THE SIROCCO)
Route 6)
Rockaway, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-7 issued by the Borough Council of Rockaway Borough.)

-----)
William H. Yanowsky, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult, with an explanation, to the following charges:

"1. In your application, filed with the Borough Council of the Borough of Rockaway and upon which you obtained your current plenary retail consumption license for premises on Route 6, Rockaway, N. J., you falsely stated, in answer to Questions 20, 21 and 22, that Peter Puehlhorn was secretary, director and the holder of 2½ of the 10 outstanding shares of stock of the applicant corporation, whereas in truth and fact said Peter Puehlhorn was neither secretary nor director nor the holder of said 2½ shares of stock; such false statements being in violation of R. S. 33:1-25.

"2. In your aforesaid application, you falsely stated 'No' in answer to Question 33 which asks: 'Have you or has any person mentioned in this application ever been convicted of any crime?'; whereas in truth and fact A. Joseph Saracco, listed as president, director and 50% stockholder, had been convicted in New Jersey in 1928 and again in 1932 of the crime of grand larceny (automobile); such false statement being in violation of R. S. 33:1-25.

"3. On July 3, 1945, you possessed illicit alcoholic beverages at your licensed premises, viz., a 4/5 quart bottle labeled 'Fleischmann's Preferred Blended Whiskey 90 Proof' and a 4/5 quart bottle labeled 'Canadian Club Blended Canadian Whiskey 90.4 Proof', both of which bottles contained alcoholic beverages not genuine as labeled; such possession being in violation of R. S. 33:1-50."

As to charge 1: It appears that defendant corporation was organized in January 1945. At that time ten shares of stock were issued to various individuals. On March 10, 1945, two and one-half shares of the stock were transferred to Peter Puehlhorn, who was then appointed as secretary of defendant corporation.

The application for renewal of the license for the present fiscal year was prepared in May 1945 by Patrick Sodaro, an accountant,

and the application as then prepared correctly showed that Peter Puehlhorn was the owner of two and one-half shares of the stock and secretary of the corporation. Puehlhorn apparently had never made any investment in the corporation, but had been employed as chef at the licensed premises. Because of a disagreement with other shareholders, he resigned as secretary on June 5, 1945, and his shares of stock were transferred on the same day to Caroline Saracco, who thereafter acted as secretary although the minute book of the corporation contained no record of a meeting at which her appointment was made. The application as previously prepared by the accountant was presented to the Borough Clerk on or about June 14, 1945. The president of the corporation says that the true facts were disclosed to the Borough Clerk, who advised the president that Puehlhorn should sign the application because, of record, he appeared to be the secretary of the corporation. Puehlhorn signed the application on June 14th as secretary of the corporation.

No explanation has been made as to the reason why the application was not changed to show that the stock formerly held by Puehlhorn had been transferred to Caroline Saracco. The affidavit was false and, from the facts stated, it appears that defendant was guilty as charged. I shall suspend defendant's license for a period of ten days because of the violation set forth in charge 1.

As to charge 2: The facts as to this charge are fully set forth in Re Case No. 454, decided herewith. I shall suspend defendant's license for a further period of twenty days because of the violation set forth in charge 2.

From the total suspension of thirty days on charges 1 and 2 I shall remit five days because of the plea, making a net suspension on these charges of twenty-five days.

As to charge 3: On July 3, 1945 an investigator of the Department of Alcoholic Beverage Control tested fifty-four open bottles on defendant's premises. He seized the two bottles mentioned in charge 3 after preliminary tests indicated that the contents thereof were not genuine. Subsequent analysis by a chemist employed by the Department of Alcoholic Beverage Control discloses that the contents of the Fleischmann bottle varied substantially in proof, and that the contents of the Canadian Club bottle varied substantially in solids from the contents of genuine bottles of the respective products. The only explanation made by the president of defendant corporation is that at that time he was not actively engaged in the business. He states that he is now taking every precaution to see that similar violations do not take place. I shall suspend defendant's license for a further period of fifteen days because of the violation set forth in charge 3, thus making a total suspension of forty days.

Accordingly, it is, on this 4th day of October, 1945,

ORDERED, that Plenary Retail Consumption License C-7, issued by the Borough Council of Rockaway Borough to The Sirocco, Inc., t/a The Sirocco, for premises on Route 6, Rockaway, be and the same is hereby suspended for forty (40) days, commencing at 2:00 a.m. October 15, 1945, and terminating at 2:00 a.m. November 24, 1945.

ALFRED E. DRISCOLL
Commissioner.

12. DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - APPLICATION TO LIFT GRANTED.

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

CONCLUSIONS
AND ORDER

Case No. 454.

BY THE COMMISSIONER:

Petitioner herein, pursuant to the provisions of R.S.33:1-31.2, seeks an order removing his disqualification from holding a liquor license because of convictions of crimes which may involve moral turpitude.

In 1928, when petitioner was seventeen years of age, he was convicted in a Court of Quarter Sessions on a charge of larceny of an automobile and was placed on probation for three years. In June 1932, when petitioner was twenty-one years of age, he was again convicted in a Court of Quarter Sessions on a charge of larceny of an automobile and was placed on probation for five years. It is unnecessary to decide whether the first crime, committed when he was under the age of eighteen years, involved moral turpitude. It is clear that his second conviction involved moral turpitude and, hence, he is disqualified from holding a license or from owning more than ten per centum of the stock of a licensed corporation unless relief is granted in these proceedings.

From the evidence it appears that, for the past thirteen years, petitioner has been a law-abiding citizen. For a number of years prior to September 1944 he was employed as a superintendent by a company which manufactures edible oils. In February 1945 his wife obtained a liquor license. He was employed on her licensed premises until a few months later, when he became an officer and owner of fifty per centum of the stock of a corporation (The Sirocco, Inc.) which obtained a transfer of the liquor license held by his wife. In the application filed for renewal for the present fiscal year by the corporation, it was falsely stated that no officer of the corporation had ever been convicted of a crime. At the hearing petitioner testified that, at the time he obtained an interest in the corporation, he was advised by a few friends that he could go into the liquor business provided he had not been arrested in the past five years. Apparently he foolishly depended upon the advice of these friends instead of making inquiry at the Department, as he should have done. In his favor it should be said that he voluntarily disclosed his criminal record to an ABC agent who was investigating another matter at the licensed premises and that he immediately thereafter filed his petition in this proceeding.

Despite the false statement in the corporation's application, I am reluctant to deny petitioner relief in this proceeding, because such denial would require him to sever his connection immediately with the licensed corporation in which he has made a very substantial investment. In proceedings decided herewith I have suspended the license of the corporation for a period of twenty days because of the false statement in the application, and I believe that that is a sufficient punishment.

Under all the circumstances, I find that petitioner has been law-abiding for a period of more than five years last past, and that his continued association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 4th day of October, 1945,

ORDERED, that petitioner's statutory disqualification, because of the aforesaid convictions, be and the same is hereby lifted in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL
Commissioner.

13. APPELLATE DECISIONS - MUTCHLER v. HACKENSACK - DISCONTINUED.

ANDREW MUTCHLER,)	
t/a CLUB CAFE,)	
)	
Appellant,)	
)	
-vs-)	
)	
CITY COUNCIL OF THE CITY OF)	
HACKENSACK,)	
)	
Respondent)	

ON APPEAL
ORDER OF DISCONTINUANCE

Mehler & Mehler, Esqs., by W. B. Mehler, Esq., Attorneys for the Appellant.
 Ernest Weller, Esq., by Dominick Fondo, Esq., Attorney for the Respondent.
 Herbert F. Myers, Jr., Esq. and John A. Christie, Esq., Attorney for the Objectors.

BY THE COMMISSIONER:

This appeal is from respondent's denial of appellant's application for a place-to-place transfer of his plenary retail consumption license from 7 Passaic Street to 380 Main Street, Hackensack, N. J.

The appellant now desires to withdraw the appeal and all of the other interested parties, through their respective counsel, have signified that they have no objection thereto.

Since no reason appears to the contrary,

It is, on this 5th day of October, 1945,

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

Alfred E. Driscoll
Commissioner.