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

BULLETIN 492 FEBRUARY 4, 1942

1. APPELLATE DECISIONS - BRYANT v. NEWARK.

FRANCES BRYANT,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,)
Respondent)

Abe W. Wasserman, Esq. and Jerome B. Litvak, Esq., Attorneys for the Appellant.
Charles S. Gansler, Esq., Attorney for the Respondent.

BY THE COMMISSIONER:

This is an appeal from the revocation of appellant's plenary retail consumption license for her tavern at 125 Broome Street, Newark, by the respondent.

On the hearing below, the appellant entered a plea of not guilty to the following charges:

"(1) On or about August 21, 1941, and on divers days prior thereto, you allowed, permitted and suffered in or upon the licensed premises known criminals, prostitutes and other persons of ill-repute in violation of Rule 4 of State Regulations No. 20.

"(2) On or about August 21, 1941, and on divers days prior thereto, you allowed, permitted and suffered disturbances, lewdness, immoral activities and allowed, permitted and suffered the licensed premises to be conducted in such manner as to become a nuisance in violation of Rule 5 of State Regulations No. 20."

At the conclusion of the hearing below, the respondent Municipal Board of Alcoholic Beverage Control of the City of Newark found the appellant guilty on both charges and thereupon revoked the appellant's license effective immediately.

In her petition of appeal, the appellant alleges that the action of the respondent was erroneous in that: (a) Its decision was not supported by the evidence, but was a result of bias and prejudice; (b) its decision was contrary to the weight of the evidence; (c) it based its decision upon the admission of improper and illegal evidence; (d) the penalty assessed was excessive.

This appeal having been heard de novo before me, we need not consider the propriety of the action of the Board below with respect to the admission of evidence. The only issues that need be considered are those raised by the respondent's plea of not guilty to the charges recited above. Under the Rules Governing Appeals, the burden of establishing error in the respondent's action rests upon the appellant.

Unhappily, the evidence in this case discloses that the licensee, Mrs. Charles Bryant, devoted very little of her time or attention to the operation of the business for which she personally assumed responsibility when she secured her license. Her activities with respect to the operation of the business appear to have been confined to opening the tavern in the early morning and occasional brief visits during other times when the tavern was open. Responsibility for the operation of the tavern appears to have been delegated to her husband, Charles Bryant, who incidentally holds a license in his own name for premises on Sussex Avenue. This dangerous practice adopted by the licensee in delegating to others responsibilities which the law imposed on her may well be the cause for her present unfortunate position.

On August 21, 1941, appellant's tavern was raided by officers of the Newark Police Department. All the persons in the tavern at the time, numbering about thirty, were taken by the officers to the police station. Of these, approximately fourteen were found to have police records of one type or another. It would be difficult to find a more distasteful collection of petty thieves, prostitutes and law violators than this group picked up by the police on the licensed premises.

Rule 4 of State Regulations No. 20 provides:

> "No licensee shall allow, permit or suffer in or upon the licensed premises any known criminals, gangsters, racketeers, pick-pockets, swindlers, confidence men, prostitutes, female impersonators, or other persons of ill-repute."

The evidence in this case demonstrates beyond any doubt that the licensee allowed, permitted and suffered in or upon her licensed premises a varying number of prostitutes. Some of those who were picked up in the raid readily admitted to being prostitutes, while the police records of others leave no doubt as to their occupation. The law is now well established that the licensee, to be found guilty of violating Rule 4 of State Regulations No. 20, must have permitted the undesirables on her licensed premises while knowing their unsavory character and reputation. Re Foster and Clauss, Bulletin 248, Item 4.

The question to be decided on this appeal is, therefore, whether or not the licensee knew or had reason to know that prostitutes were being allowed to congregate in or upon her premises.

Officer Raymond F. Manning testified that in the early part of February 1941, he warned Mr. Bryant about the character of the people "hanging out in the place." This witness states that he pointed out at least three of the girls and told Mr. Bryant that "they had criminal records and were prostitutes." At least one of the girls and perhaps all of those whom he pointed out were found on the licensed premises at the time of the raid in August.

Similarly, Officer Benjamin Finestein testified that in the latter part of January or early part of February, he "warned Bryant about these fellows and girls running in his place when they would see a radio car." Officer Finestein testified that he told Bryant that these people had criminal records and, as early as January or February, this witness appears to have made the prophetic statement to Mr. Bryant that "they would get him in trouble." This witness insists that he advised Bryant that these folks were "nothing but prostitutes and petty larceny thieves."

Officer Philip J. Smith testified that on the night of August 19th, he told Mr. Bryant to keep "them bums" out of the place, and warned him that if he (Bryant) did not do so, the premises would be closed.

On August 20th, Officer Daniel S. Dorian, who had accompanied Officer Smith on the previous night, appears to have added his warning. He testified: "I warned Charlie about keeping prostitutes out of his place and he made no reply."

Mr. Bryant, who was called as a witness by the appellant, not only denied having received any warning, but also denied any knowledge that the girls who frequented the tavern were in fact prostitutes. In the face of the negative testimony offered by Mr. Bryant and the other witnesses called by the appellant, we have the affirmative testimony of the various policemen. If I am to believe the testimony of these officers, it is apparent that those to whom the appellant delegated the responsibility for the operation of the tavern had ample warning as to the character of the people who frequented her place. I see no reason for doubting the veracity of these officers. As a result, the conclusion is inescapable that the licensee knew or should have known that she was permitting or suffering known prostitutes and other persons of ill-repute upon her licensed premises.

In view of the above, it is perhaps of little importance to note that these same persons may not have been "known criminals" within the meaning of the rule and the decisions. The failure of the respondent, or those to whom she delegated the responsibility for the control and management of her tavern, to heed the advice and warning of the police, coupled with continued acquiescence in permitting known prostitutes upon her premises, is sufficient in itself to sustain the decision of the Board below.

Nor in view of the presence of known prostitutes upon the licensed premises despite the warnings, is it necessary to consider in detail the evidence offered with respect to the second charge. Suffice it to say that the testimony on its surface does not appear to sustain the charge. There is no evidence that the premises were used for either lewd or immoral activities.

The business in which the licensee sought to participate is different from an ordinary trade or business. Licensees have heretofore been held strictly accountable for the character of the liquor found upon their licensed premises. Re Cutter, Bulletin 479, Item 12. Illicit liquor is out! So also are those knowingly engaged in illicit enterprises. Licensees will be held strictly accountable where they knowingly permit those engaged in the illicit activities described in Rule 4 of State Regulations No. 20 to congregate in their taverns. By the same token, licensees cannot be permitted to escape their responsibility for conditions on their premises by the delegation of authority to someone else. Where warnings are given by the police, if licensees disregard the same they do so at their peril. Licensed premises are not a safe haven for petty thieves, prostitutes, criminals and the like. The contention made by the learned counsel for the appellant that appellant's tavern was no worse than many another is entirely beside the point.

The action of respondent is affirmed.

Accordingly, it is, on the 21st day of January, 1942,

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

ALFRED E. DRISCOLL,
Commissioner.

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

In the Matter of Disciplinary Proceedings against

ABRAHAM GOLUB,
367 Springfield Ave.,
Newark, N. J.,

Holder of Plenary Retail Distribution License D-15, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Louis H. Kagan, Esq., Attorney for Defendant-Licensee.
G. George Addonizio, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee has pleaded guilty to a charge of having sold, on October 6, 1941, a fifth-gallon bottle of Sherwood Rye, Maryland Straight Rye Whiskey (4 years old-90 Proof) below the Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

I am satisfied, as licensee contends, that the violation was unwitting and not made from any deliberate desire to "chisel." It appears that he was assured by the salesman for the vendor of the product in question that it was not subject to a minimum resale price. Such lack of intent does not, however, excuse the violation. Re Cooper, Bulletin 461, Item 6. Nor is a licensee entitled to place any reliance on the "hearsay" information received from salesmen or sources other than the official Fair Trade price lists. Re City Wine & Liquor Stores, Inc., Bulletin 490, Item 1.

In view that there is no previous record of any suspension against this licensee, and since the facts disclose a lack of any aggravating circumstances, I shall impose the minimum suspension of ten days. Five days will be remitted because of the guilty plea. Re City Wine & Liquor Stores, Inc., supra.

Accordingly, it is, on this 22nd day of January, 1942,

ORDERED, that Plenary Retail Distribution License D-15, heretofore issued to Abraham Golub by the Municipal Board of Alcoholic Beverage Control of the City of Newark, for premises at 367 Springfield Avenue, Newark, be and the same is hereby suspended for a period of five (5) days, commencing January 26, 1942, at 3:00 A. M. and concluding January 31, 1942, at 3:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

3. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENT IN LICENSE APPLICATION - CONCEALING THE INTEREST OF ANOTHER - AIDING AND ABETTING A NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - FRANK ADMISSION - SITUATION CORRECTED - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against

PAUL EMIL POUSENC,
32 Broad St.,
Keyport, N. J.,

Holder of Plenary Retail Consumption License C-7, issued by the Borough Council of the Borough of Keyport, and transferred during the pendency of these proceedings to

WALTER MELEE

for the same premises.

CONCLUSIONS AND ORDER

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Leo Berg, Esq., Attorney for Defendant-Licensee.
Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee has pleaded non vult to the following charges:

(1) Falsely denying in his application for license for the current fiscal year that Walter Melee had any interest in the license or business conducted thereunder. See R. S. 33:1-25; and

(2) Aiding and abetting Walter Melee to exercise the privileges of such license. See R. S. 33:1-26; R. S. 33:1-52.

It appears that Paul Emil Pousenc applied for the license in question on behalf of Walter Melee, the true owner of the tavern. The reason for the unlawful "front" was that Walter Melee had a substantial judgment against him, which he has recently satisfied.

It also appears that, since the institution of these proceedings, the unlawful situation has been corrected by a transfer of the license to Walter Melee, who is apparently fully qualified to hold a liquor license in his own name.

Under the circumstances, the license will be suspended for ten days. Cf. Re King, Bulletin 404, Item 5; Re Nichols, Bulletin 407, Item 2.

Accordingly, it is, on this 23rd day of January, 1942,

ORDERED, that Plenary Retail Consumption License C-7, heretofore issued to Paul Emil Pousenc by the Borough Council of the Borough of Keyport, for premises 32 Broad Street, Keyport, and transferred during the pendency of these proceedings to Walter Melee, be and the same is hereby suspended for a period of ten (10) days, commencing January 28, 1942, at 3:00 A.M., and concluding February 7, 1942, at 3:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - FRONT - REAL OWNER DISQUALIFIED BECAUSE NOT A RESIDENT OF STATE FOR FIVE YEARS - USE OF CORPORATE FICTION TO OBTAIN A LICENSE WHICH INDIVIDUAL WAS THEN INELIGIBLE TO HOLD - LICENSE SUSPENDED FOR BALANCE OF TERM - LEAVE TO BONA FIDE TRANSFEREE TO PETITION TO LIFT SUSPENSION AFTER 10 DAYS.

In the Matter of Disciplinary Proceedings against CLIFFSIDE PARK TOWN TAVERN, INC., 339 Palisade Ave., Cliffside Park, N. J., Holder of Plenary Retail Consumption License C-8, issued by the Borough Council of the Borough of Cliffside Park.	CONCLUSIONS AND ORDER

Harry A. Accomando, Esq., Attorney for Licensee.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded guilty to charges alleging, in substance, that since January 15, 1939 it has acted as a front for, and unlawfully employed without an employment permit, one John McManus, who is the nominal holder of 2% of its corporate stock; that, since January 23, 1939, it knowingly aided and abetted said John McManus, a non-licensee, to exercise the rights and privileges of its license and that, in its applications for renewals, it falsely stated that all persons mentioned therein had resided in New Jersey for five years whereas, in fact, said John McManus had not resided in New Jersey for five years prior to the date of filing the various applications.

John McManus lived in New York City until January 1937. At that time, he moved to New Jersey and has lived in this State continuously since that time.

In January 1939 McManus was employed as bartender by a former licensee at the premises herein mentioned. He testified in this proceeding that, in January 1939, he was induced by the former licensee to invest his life's savings in the purchase of this business; that, at that time, the former licensee accompanied him to her lawyer's office where defendant corporation was organized. Apparently, this corporation was formed because McManus then lacked the required five years' residence. He then became the nominal owner of 2% of the corporate stock, the balance of the stock being issued to "dummy" stockholders who, admittedly, have never had any interest in the licensed business. Since the license was transferred to the name of defendant corporation, John McManus has operated the licensed business as his own. He testified that all of his original investment is still tied up in the business.

It thus appears that a corporate device was used as an artifice by an individual to obtain a license which the individual was then ineligible to hold. I shall suspend the license for the balance of the fiscal year.

Defendant has requested leave to transfer its license to a duly qualified person. Defendant has frankly admitted its guilt. The only apparent disqualification of the person for whom it acted as "front" was lack of residential requirements. In accordance with the procedure in Re Silver Palm Corporation, Bulletin 422, Item 8; Re Bowe, Bulletin 423, Item 2; Re Margrie, Bulletin 423, Item 10; and Re Lesyczynski, Bulletin 446, Item 8, leave will be given to apply to lift the suspension as hereinafter set forth.

Accordingly, it is, on this 23rd day of January, 1942,

ORDERED, that Plenary Retail Consumption License C-8, heretofore issued to Cliffside Park Town Tavern, Inc. by the Borough Council of the Borough of Cliffside Park, be and the same is hereby suspended for the balance of its term, effective January 27, 1942, at 3:00 A. M.; and it is further

ORDERED, that if and when transfer of the license to a duly qualified purchaser, other than John McManus, is granted by the local issuing authority, application may be made to me to vacate said suspension, provided, however, that in no event will said suspension be vacated prior to the expiration of ten (10) days from the effective date of the suspension imposed herein.

ALFRED E. DRISCOLL,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - GUILTY PLEA - 5 DAYS' SUSPENSION.

FAIR TRADE VIOLATIONS - PENALTIES RECONSIDERED.

In the Matter of Disciplinary Proceedings against	)
PARK LIQUORS CORP., 109 Chestnut Street, Roselle Park, N. J.,	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Distribution License D-4, issued by the Mayor and Borough Council of the Borough of Roselle Park.	)

Daniel G. Kasen, Esq., Attorney for Park Liquors Corp.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded guilty to a charge alleging that:

> "On or about October 24, 1941, without having first obtained a special permit so to do, you sold a fifth-gallon bottle of 'Vat 69' Blended Scotch Whisky below the minimum consumer price published in Bulletin 480 of this Department, in violation of Rule 6 of State Regulations No. 30."

The sole question, therefore, concerns the penalty to be imposed. Defendant has no previous record.

Defendant has submitted to me a brief which has led me to review the policy of the Department as to penalties in cases where a licensee, without any previous record, has violated the fair trade regulations. I find that between November 28, 1938 and March 25, 1939, thirty-nine fair trade cases were tried and decided. One case was dismissed when it was established that, in fact, no violation had occurred; in thirty-one cases a penalty of at least ten days was imposed and in the other seven cases a five day penalty was imposed when the licensee established to the satisfaction of the Commissioner that there was no intent to "chisel" and that the violation had been due to carelessness.

In the case of Re Polonsjy and Kiewe, Bulletin 308, Item 9, decided on April 2, 1939, the Commissioner established a new policy. In that case he held that where a licensee with no previous record pleaded guilty to a fair trade violation, in the absence of aggravating circumstances a minimum five day suspension would be imposed instead of the theretofore customary ten day suspension. Since that time, guilty pleas have been entered in one hundred fifty-two cases and seventeen cases have proceeded to hearing. I have no doubt that among the one hundred and fifty-two defendants who thus pleaded guilty there were many who made so-called honest mistakes. In any event, the policy has saved the Department time and expense in disposing of these cases.

The result of this policy has been that since April 2, 1939, a licensee with no previous record, who was charged with a violation of the fair trade regulations, has had a choice of two courses: (1) he could plead guilty, or (2) he could go to hearing. If he pleaded guilty, in the absence of aggravating circumstances his license would be suspended for a minimum of five days. If he elected to go to hearing and proved that, in fact, no violation had occurred, the charge would be dismissed. On the other hand, if he was found guilty after hearing and neither mitigating nor aggravating circumstances appeared, his license would be suspended for ten days, or, if mitigating circumstances appeared, the penalty might be correspondingly reduced. In no case, however, has a penalty of less than five days been imposed after a finding of guilt. Re Cooper, Bulletin 461, Item 6.

In its brief, defendant argues that the present policy of the Department puts a licensee who deliberately "chisels" and a licensee who makes an honest mistake in the same position so far as a first violation of the fair trade regulations is concerned. This is true only in those cases where the Department has been unable to prove and the record therefore does not show that the licensee was in fact engaged in a deliberate violation. Upon proof of the latter, a much more severe penalty may be expected. See In Re Tarlow, Bulletin 436, Item 1. The apparent purpose of the argument, however, is to seek a change in the present policy so that a licensee who makes an honest mistake due to carelessness may, in some manner, receive a penalty less than the present five day minimum. The argument, however, does not lead me to consider the reduction of the minimum penalty for such a violation. Whether a violation of this nature is deliberate or due to carelessness, it tends to break down the regulation. The argument does raise the question as to whether a guilty plea should be accepted in all cases, irrespective of the nature of the violation. However, because of the time and expense saved, I shall continue to accept guilty pleas in all cases which concern a first violation of Regulations 30. While this policy may unduly favor a licensee who is guilty of a single deliberate violation, defendant has no cause of complaint on that account. I have carefully considered the ruling in Re Cooper, supra, and agree with the result

reached therein that a minimum five day penalty should be imposed in the absence of aggravating circumstances if a licensee has pleaded guilty or is able to establish affirmatively at the hearing that there were mitigating circumstances.

The file in this case shows that defendant openly advertised and sold the item in question for $2.89, while the minimum consumer price had been duly fixed at $3.95. Defendant contends that it honestly believed that the item had been withdrawn from fair trade, although it admits that it had on the licensed premises a copy of Bulletin 480 which established the correct price. Even if these facts had appeared at a hearing, the minimum five day penalty would have been imposed. In view of the guilty plea, I shall suspend the license for five days.

Accordingly, it is, on this 24th day of January, 1942,

ORDERED, that Plenary Retail Distribution License D-4, heretofore issued to Park Liquors Corp. for premises 109 Chestnut Street, Roselle Park, by the Mayor and Borough Council of the Borough of Roselle Park, be and the same is hereby suspended for a period of five (5) days, commencing February 2, 1942, at 2:00 A. M. and terminating February 7, 1942, at 2:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - SLOT MACHINES - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against B. P. O. ELKS ENGLEWOOD LODGE #1157, 17 Bennett Road, Englewood, N. J., Holder of Club License CB-69, issued by the State Commissioner of Alcoholic Beverage Control.	CONCLUSIONS AND ORDER

Edward J. Wohlfarth, Exalted Ruler, for Defendant-Licensee.
G. George Addonizio, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleaded guilty to charges alleging that, on September 18, 1941, it possessed a slot machine, a device and apparatus designed for the purpose of gambling, in violation of Rules 7 and 8 of State Regulations No. 20.

The Department file discloses that during the course of a routine inspection of the licensed premises on September 18, 1941, investigators found a five cent jack-pot slot machine in the barroom of the licensed premises.

It is no excuse that the proceeds obtained by the Lodge from the machine have been used for charitable purposes; mere possession of a slot machine on licensed premises is a violation of the State Regulations. Yountakah Country Club, Inc., Bulletin 488, Item 4.

The usual penalty for possession of slot machines is ten days.

By entering a guilty plea, the licensee has saved the Department the time and expense of proving its case, for which five days of the penalty will be remitted.

Accordingly, it is, on this 28th day of January, 1942,

ORDERED, that Club License CB-69, issued by the State Commissioner of Alcoholic Beverage Control to B. P. O. Elks Englewood Lodge #1157, for premises at 17 Bennett Road, Englewood, be and the same is hereby suspended for a period of five (5) days, commencing February 1st, 1942, at 12 o'clock noon and terminating February 6th, 1942, at 12 o'clock noon.

ALFRED E. DRISCOLL,
Commissioner.

7. MORAL TURPITUDE - CONVICTION OF BREAKING, ENTERING AND LARCENY INVOLVES MORAL TURPITUDE.
DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - FREE AND FRANK DISCLOSURE OF PREVIOUS RECORD - APPARENT INNOCENT EMPLOYMENT ON LICENSED PREMISES DESPITE DISQUALIFICATION - APPLICATION GRANTED.

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

Case No. 175

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

In January 1930 petitioner, then about nineteen years of age, was convicted of breaking and entering, for which he was sentenced to serve four months in the county jail. In April 1930 he was sentenced to serve sixty days in the county jail for larceny, and in August 1930 sentenced to serve sixty days in the county jail either on suspicion of larceny or as a suspicious character. Petitioner claims that all of these charges are interrelated and all involve one offense, wherein he and some other boys broke into a building and stole an automobile. In 1931 petitioner, with four or five other young men, stole over $1,000.00 worth of merchandise from a dry goods store, for which he was convicted in 1932 of larceny, sentenced to serve a year in State Prison, and later transferred to a reformatory. He volunteers the information, which does not appear of record, that in 1933 he served forty days of a sixty-day jail sentence on a disorderly conduct charge. In 1934 he was convicted of disorderly conduct (arising, as he claims, out of a street fight), and sentenced to thirty days in jail. Since 1934 his record appears to be clear.

Aside from his other convictions, petitioner's convictions in 1930 of breaking, entering and larceny, and his conviction in 1932 of larceny, all indubitably involved moral turpitude, and hence disqualify him from being employed by a liquor licensee in this State. R. S. 33:1-25, 26. He now seeks to be relieved, pursuant to R. S. 33:1-31.2, of such disqualification upon claim that he has led a decent and law-abiding life during the past five years.

In view of petitioner's extensive criminal record, his conduct during the past five years is subject to careful scrutiny and such conduct must demonstrate conclusively that he has turned over a new leaf, so that his association with the alcoholic beverage industry will not be contrary to the public interest. The fact that he has not been convicted of a crime during that period is not, in itself, sufficient ground to grant him relief. Cf. Re Case No. 155, Bulletin 486, Item 6.

Evidence of the change in petitioner's way of life was furnished by a city fireman, employed for the past twenty-five years by the municipality wherein the petitioner resides, who testified that he gave petitioner a home when he was released from the reformatory; that, "I think I have made a man out of him and he is doing good.... he tends to his own business and does not run around with any gang. He has learned a lesson." He said further that if the signature of neighbors or acquaintances, attesting to the petitioner's good reputation would be accepted, he could get a thousand signatures.

Further evidence of petitioner's honest and straightforward attitude since his release is the fact that in 1935, when his questionnaire was filed with this Department in connection with his employment as a truck driver for a liquor licensee, he made a frank disclosure of his conviction in 1932. This clearly demonstrates that he did not conceal his past in seeking a legitimate field of employment and was unaware that he was actually disqualified from employment in the liquor industry.

As to his employment since 1934, it appears that first he worked as a truck driver for a glass dealer; then, until some time in 1936, worked in the same capacity for the beverage concern referred to in his questionnaire; from 1936 to 1938 he worked on various W. P. A. projects; and from 1938 to date he acted as a bartender, although there were some intervals during this period when he was unemployed. He swears that he did not know that he was disqualified from working for a liquor licensee because of his convictions of crime until an investigator of this Department so informed him, whereupon he immediately filed his present application.

The evidence presented satisfies me that he has gone straight since 1934; that he acted in good faith and in ignorance of the law when he obtained employment with various liquor licensees of this State, although in fact disqualified from such employment.

The police authorities of the municipality wherein the petitioner resides have nothing on record against him since 1934.

I therefore conclude that his continued association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on the 29th day of January, 1942,

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

ALFRED E. DRISCOLL,
Commissioner.

8. MORAL TURPITUDE - POSSESSION AND PASSING COUNTERFEIT MONEY INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT BY ALIEN - FAILURE TO AFFIRMATIVELY ESTABLISH GOOD CONDUCT FOR FIVE YEARS - APPLICATION DENIED.

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

Case No. 182

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

In 1928 petitioner, who then was, and still is, a Russian alien, was convicted in this State of maintaining a gambling house and fined $1,000.00. In 1935, while still engaged in gambling activities, he was convicted in a Federal Court in Maryland of possessing and passing counterfeit money, sentenced to imprisonment for eighteen months and released on parole on July 1, 1936. This crime, prima facie, involved moral turpitude. Re Case No. 227, Bulletin 278, Item 10.

More than five years having elapsed since the date of the last conviction, petitioner now seeks in this proceeding and pursuant to R. S. 33:1-31.2 to remove his disqualification from being employed by a liquor licensee in this State.

In view of petitioner's comparatively fresh criminal record, his background as a "bookmaker" and the seriousness of the crime of counterfeiting, I will not afford him relief unless I am fully convinced that he has truly reformed. The mere fact that he has not been convicted of a crime during the five years last past does not entitle him to the relief sought. Re Case No. 155, Bulletin 486, Item 6.

The testimony of petitioner's character witnesses, two of whom are social acquaintances with little knowledge of his business activities and the third, a relative, who has no first-hand knowledge of petitioner's affairs, does not establish to my satisfaction that petitioner has actually turned over a new leaf.

As a Russian alien, petitioner may not, in any event, sell or serve or solicit the sale of alcoholic beverages, or participate in their manufacture. Considering his criminal record, I shall not exercise my discretionary power to lift his disqualification, so as to qualify him to obtain a special permit to be employed in a limited capacity on licensed premises.

The petition is therefore denied.

ALFRED E. DRISCOLL,
Commissioner.

Dated: January 29, 1942.

9. APPELLATE DECISIONS - BERGEN WINES & LIQUORS v. HO-HO-KUS.

BERGEN WINES & LIQUORS, a corporation of the State of New Jersey,

Appellant,

-vs-

BOROUGH COUNCIL OF THE BOROUGH OF HO-HO-KUS,

Respondent

ON APPEAL
CONCLUSIONS AND ORDER

Louis Logan, Esq. and Samuel L. Minsky, Esq., Attorneys for Appellant.
Doughty & Dwyer, Esqs., by Thomas S. Doughty, Esq. and Michael A. Dwyer, Esq., Attorneys for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of transfer of a plenary retail distribution license from Louis Logan to appellant, Bergen Wines and Liquors, a corporation of the State of New Jersey. The premises in question are located on North Maple Avenue, Ho-Ho-Kus.

On May 25, 1940 respondent granted a plenary retail distribution license to Louis Logan for the premises in question. It renewed his license for the fiscal years 1940-41 and 1941-42. On November 19, 1941 it denied an application for transfer of said license from Louis Logan to appellant, Bergen Wines and Liquors. Hence this appeal.

In its answer filed herein, respondent alleges, as a first separate defense, that the plenary retail distribution license issued to Louis Logan was "issued to him because of respondent's reliance on his individual integrity and respondent would not have issued said license to a corporation."

At the hearing herein, Councilman Ruegg testified that if the license is transferred to a corporation "no one knows who is the owner of that liquor license from then on." Councilman Hand testified that "we felt that a corporate entity entering the picture in the nature of a small private corporation, as this was, could change hands over night and others whom we had previously refused might enter the picture under this subterfuge."

No question has been raised as to the existence of appellant corporation or as to the qualifications of any of its present officers and stockholders. In fact, it affirmatively appears that all of the present officers and stockholders are fully qualified. The fear expressed by members of respondent Council that the stock of the appellant corporation may subsequently pass into the hands of unqualified persons is met by the statute. Under the provisions of R. S. 33:1-31(i), respondent has the power to revoke or suspend the license if hereafter any person not fully qualified obtains a beneficial interest in ten per cent or more of the capital stock of the corporation. R. S. 33:1-34, as interpreted, provides that whenever any change shall occur in the facts as set forth in any application for license, the licensee shall file with the issuing authority a notice in writing of such change within ten days after the occurrence thereof. In Re Roberts, Bulletin 366, Item 2, the late Commissioner Burnett ruled:

"Hence, in any case where there is such a change, converting a person, theretofore holding only 10% or less or none of the stock, into a holder of more than 10%, the corporation should notify the issuing authority in writing within ten days.

"Similarly, R. S. 33:1-34 requires the corporation to give the same type of notice on any change in officers (including directors)."

It appears from the evidence that respondent has heretofore granted liquor licenses which are now held by the Great Atlantic & Pacific Tea Company and Grand Union Company. I fail to see how respondent can lawfully distinguish between these corporations, which are characterized in the testimony as nationally known corporations, and the appellant corporation. A difference in size, without more, is not a sufficient distinction. Respondent's action in licensing the one and refusing to grant a transfer of a license to the other appears to be discriminatory and unreasonable. Respondent also alleges, as a second separate defense, that at the time the license was originally granted it was represented that the business would be conducted exclusively as a package store and that at the present time it is conducted as a combined delicatessen and liquor store. Louis Logan denies that any such representation was made at the time he originally obtained his license. Respondent has never adopted an ordinance enacting that plenary retail distribution licenses shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which any other mercantile business is carried on. At present five other plenary retail distribution licensees are conducting other mercantile business on their licensed premises. The denial because of the reason set forth in the second separate defense appears to be unreasonable and discriminatory.

Since no valid reason for denial appears, I must reverse the action of respondent herein.

Accordingly, it is, on this 29th day of January, 1942,

ORDERED, that the action of respondent be and the same is hereby reversed and respondent is directed to grant the transfer of the license as requested.

ALFRED E. DRISCOLL,
Commissioner.

10. APPELLATE DECISIONS - SPEZIO v. JAMESBURG.

SALVATORE SPEZIO,

Appellant,

-vs-

BOROUGH COUNCIL OF THE BOROUGH OF JAMESBURG,

Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

- - - - - - - - - - - - - - - - - - -

George S. Applegate, Jr., Esq., Attorney for Appellant.
Guido J. Brigiani, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Respondent, by unanimous vote, denied appellant's application for a plenary retail consumption license for premises at the corner of Willow Street and Railroad Avenue. Hence this appeal.

The denial resulted from respondent's policy of restricting the number of consumption licenses outstanding in its municipality to the presently existing quota of four. This policy is evidenced by its refusal, ever since July 1, 1936, to issue any new consumption licenses and also by its resolution of October 4, 1937 (reaffirmed by resolution of January 5, 1940), which purports to fix a quota of four consumption licenses.

This Department has already held that this established policy of respondent is reasonable despite the fact that the resolutions are technically defective in that limitations of licenses must, since July 1, 1937, be established by ordinance. Pergola v. Jamesburg, Bulletin 398, Item 6. In the cited opinion the Commissioner made the following significant statement:

> "However, it does not follow, because of the invalidity of the resolutions, appellant's license must therefore issue. Both resolutions, together with the testimony of five of the six councilmen, lead to the conclusion that respondent is of the actual and bona fide belief that the four consumption places now existing in Jamesburg are sufficient taverns for the Borough.
>
> "Such belief, since apparently reasonable both as regards the Borough as a whole and also as regards appellant and his vicinity, still prevails despite the failure of respondent's resolutions and is itself sufficient to sustain respondent's refusal to issue a fifth consumption license in Jamesburg. Landgraff v. North Plainfield, supra; Brost v. East Amwell, Bulletin 304, Item 1. Cf. Haycock v. Roxbury, Bulletin 101, Item 3; Goff v. Piscataway, Bulletin 234, Item 5; Kuller v. Manasquan, Bulletin 319, Item 3."

Appellant relies almost entirely upon the allegation that the premises in question, having been licensed for many years prior

to the pending application, are adaptable only for use as a tavern and therefore the refusal to permit the sale of liquor thereon will result in great financial loss to the appellant. The evidence fails to disclose that the premises in question may not be used for purposes other than a tavern.

Moreover, the fact that a particular property has been operated as a tavern for a long period of time neither entitles it to a preferential position over other properties in the community nor is a sufficient reason for excepting it from the operation of a reasonable policy of limitation. A license is a personal privilege, exercisable only by the licensee. No place is entitled to a license more than another. Re Konesky, Bulletin 217, Item 7.

While I am sympathetic with appellant's plea that he will suffer financially if not given a liquor license, the test in the issuance of licenses is not the deprivation of an individual but rather the welfare of the community at large. Where private and public interests conflict, the latter must necessarily prevail. Fine v. Elizabeth, Bulletin 346, Item 18; De Vivo v. Highlands, Bulletin 427, Item 5.

The action of respondent is affirmed.

Accordingly, it is, on this 30th day of January, 1942,

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

Alfred E. Driscoll

Commissioner.

CHECKED BY No. 3