

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

BULLETIN 557

MARCH 16, 1943.

1. MUNICIPAL OFFICIAL-LICENSEE - COUNCILMAN HOLDING A LICENSE DISQUALIFIED FROM PARTICIPATING IN ANY WAY IN ALCOHOLIC BEVERAGE MATTERS COMING BEFORE COUNCIL.

March 4, 1943

Mr. Fred Mohr  
Highlands, N. J.

Dear Mr. Mohr:

I have yours of February 25th, relating to the issuance of your plenary retail consumption license for premises at 203 Bay Avenue, Highlands, and to your participation in alcoholic beverage matters coming before the Mayor and Borough Council.

Your letter states, first, that your license was issued on July 1, 1942, and that you were sworn in as a member of Borough Council on January 1, 1943. Under these circumstances, you ask whether or not you must have a different retail license to be issued by the State Commissioner for the period of January 1, 1943 to June 30, 1943.

License C-1 which you now hold, and which was issued by the local issuing authority, will continue in force until June 30, 1943, unless sooner surrendered, suspended or revoked. Pursuant to R. S. 33:1-20, however, your application for a renewal of that license for the license year 1943-44 must be made to the Commissioner, since a local issuing authority cannot issue a license to one of its members.

Your second question reads:

"....can I have the privilege of relinquishing my seat in the Council, temporarily at any meeting and directing the Mayor or the Officiating Officer to listen to me as an ordinary citizen on what I believe to be matters pertaining to the best interest as regards Alcoholic Beverage Control in this Community?"

The answer is NO. A Councilman who holds a license is disqualified from participating in any way in alcoholic beverage matters coming before the Council. Such participation if permitted would result in a conflict between private interest and public duty. The previous rulings are collected and discussed in Re Kerner, Bulletin 298, Item 9. As far back as 1935, it was ruled that disqualified members may not satisfy the requirements merely by refraining from voting on the issue presented. They must withdraw entirely from the proceeding for otherwise the purpose of the disqualification will in large part be nullified. (Re Siracusa, Bulletin 89, Item 9). To "withdraw entirely" means precisely that. A Councilman's influence upon Council's determination would be no less real -- perhaps even more so -- if, for the occasion, he should step down from the rostrum and speak in the temporary role of private citizen.

Very truly yours,  
ALFRED E. DRISCOLL  
Commissioner.

2. LICENSEES - LICENSE MAY NOT BE CONTINUED BEYOND EXPIRATION OF LICENSE TERM WITHOUT PAYMENT OF FULL FEE, RENEWAL OF LICENSE AND EXISTENCE OF LICENSED PREMISES - LICENSE MAY NOT BE "SAVED" OR HELD IN ABEYANCE.

March 4, 1943

Amos M. Waln, Esq.  
Attorney for Hamilton Township  
Trenton, N. J.

Dear Mr. Waln:

I have yours of February 26th, relating to the limitation upon the number of plenary retail consumption licenses in Hamilton Township, Mercer County.

The operative numerical limitation provision in the Township is contained in Section 42 of ordinance adopted June 15, 1937, as last amended by ordinance adopted December 6, 1938. The pertinent portion of the regulation reads:

"The number of Plenary Retail Consumption Licenses issued and outstanding in the Township of Hamilton at the same time shall not exceed thirty-five provided, however, that this limitation shall not prevent the issuance of renewals of Plenary Retail Consumption Licenses to persons holding such licenses at the time this regulation was adopted, and further provided that this limitation shall not prevent the transfer of such licenses or the renewal thereof according to law. No new Plenary Retail Consumption Licenses shall be issued to any one not holding such license at the time this regulation was adopted unless and until the number issued and outstanding shall be reduced by surrender, revocation or non-renewal to less than thirty-five."

As pointed out in your letter, the number of plenary retail consumption licenses outstanding in the Township exceeds the quota figure of thirty-five -- our records indicate that the number of such licenses now in effect is fifty-two. You are correct in stating that, pursuant to the ordinance, a present plenary retail consumption licensee who failed to obtain a renewal of the license held by him could not later obtain a new plenary retail consumption license unless and until the number of such licenses then outstanding is fewer than thirty-five. (If the second sentence of the quoted ordinance section should be construed as permitting a new license to be issued over and above the quota, at any future date, to any person who happened to have held a license when the quota was adopted, such a provision would be arbitrary and necessarily invalid. Virgilio v. Orange, Bulletin 437, Item 1.)

In view of this ordinance background, you point out that a number of plenary retail consumption licensees, complaining that they are operating at a loss because of gasoline regulations, etc., "desire to obtain renewals of their licenses in order that they may retain the privilege of conducting their businesses after the war." Further, "they have requested that the governing body issue licenses to them, merely for the purpose of escaping the provisions of said ordinance, under which licenses they will conduct no businesses, and that such licenses be issued for a nominal fee."

Your letter indicates that you have examined the Alcoholic Beverage Law and can find no source of power in the governing body to comply with the licensees' request. You are right.

"A license may not be 'saved' or 'carried over' or 'held in abeyance' pending its future use beyond the period of the term for which it was issued. R. S. 33:1-12 establishes the minimum fees to be fixed by the municipal authority and each license is issued subject to the fixed fee. R. S. 33:1-25 requires that a deposit of the full amount of the fee must accompany the license application." Re Aronsohn, Bulletin 550, Item 6.

Furthermore, ".....license applications are granted and the licenses issued to particular persons for particular premises. The law clearly contemplates the necessity of premises in connection with a license issuance. R. S. 33:1-24 makes it the duty of the issuing authority to inspect premises sought to be licensed; and R. S. 33:1-26 requires a separate license for each specific place of business. Furthermore, if the applicant does not have possession or right of possession of, or interest in, the premises, the license may not be granted. The principle was first enunciated by this Department in 1934 in Procoli v. Trenton, Bulletin 28, Item 6, and has been followed to this date. Alberts v. Roselle, Bulletin 444, Item 1; Berry v. Newark, Bulletin 433, Item 8; Bodrato v. Northvale, Bulletin 433, Item 1; Gimber v. Galloway, Bulletin 427, Item 9; Hindin v. Egg Harbor, Bulletin 399, Item 1; Licata v. Camden, Bulletin 342, Item 1." Re Aronsohn, supra.

It clearly appears, therefore, that under the Alcoholic Beverage Law and regardless of the Township's limitation ordinance, the municipal authority cannot issue licenses as to which there are no licensed premises; nor can licenses be issued for a nominal fee.

Very truly yours,  
ALFRED E. DRISCOLL  
Commissioner.

3. MILITARY FORCES - SALE AND SHIPMENT OF ALCOHOLIC BEVERAGES HAVING ALCOHOLIC CONTENT IN EXCESS OF 3.2 PER CENTUM BY WEIGHT TO VOLUNTARY UNINCORPORATED ORGANIZATIONS OF NAVY PERSONNEL, OPERATING PURSUANT TO REGULATIONS PROMULGATED BY THE SECRETARY OF THE NAVY, PRESENTLY PERMISSIBLE.

March 4, 1943

Sol L. Kesselman, Esq.  
Newark, N. J.

Dear Mr. Kesselman:

I have before me your letter of March 1st in reference to the sale of alcoholic beverages having an alcoholic content in excess of 3.2 per centum by weight to military personnel.

You are entirely correct in assuming that the recent instructions issued by the War Department applied only to Army personnel and premises used by the Army for military purposes, and hence, that my ruling, likewise, is confined to such personnel and premises. It follows that licensed New Jersey manufacturers and wholesalers may continue to sell and ship alcoholic beverages having an alcoholic content in excess of 3.2 per centum by weight to any voluntary unincorporated organization of Navy personnel operating a place for the sale of goods pursuant to regulations promulgated by the Secretary of the Navy. However, before making such sales or shipments, the seller, in every instance, should first ascertain from the proper naval authorities that the sale or shipment is being made to navy personnel within the aforesaid limitations.

Very truly yours,  
ALFRED E. DRISCOLL  
Commissioner.

4. MORAL TURPITUDE - FACTS EXAMINED - CRIME OF ATTEMPTED BURGLARY  
FOUND TO INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - VIOLATION  
OF PAROLE DURING FIVE YEARS LAST PAST - 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  
AND ORDER

Case No. 239.  
-----)

BY THE COMMISSIONER:

In 1932 petitioner was convicted in New York City of attempted burglary and sentenced to serve from two and a half to five years in Sing Sing Prison. According to the petitioner, he and two companions broke into a store and were caught. Petitioner was released from prison in December 1933, on parole, which was to terminate in December 1936.

When the Department discovered that petitioner was employed in a licensed tavern in this State, he was instructed to appear at a hearing before this Department to give his version of what had occurred in order that it should be determined whether the crime of which he had been convicted involved moral turpitude, and hence, peremptorily disqualified him from working for a liquor licensee in this State. See R. S. 33:1-26.

At the conclusion of the hearing, since no facts were presented to eliminate the element of moral turpitude which is ordinarily involved in the crime of attempted burglary (cf. Re Case No. 394, Bulletin 486, Item 5), petitioner applied for lifting of his disqualification pursuant to R. S. 33:1-31.2. Under the latter provision of the law, petitioner must establish to my satisfaction that he has been law-abiding for at least five years last past and that his connection with the alcoholic beverage industry would not be contrary to public interest.

It appears from departmental investigation that petitioner was convicted in 1922 of being a "ticket speculator", convicted in 1930 for reckless driving of an automobile without a license, and, in addition, that he was arrested on four other occasions for various offenses, but was not convicted. It further appears that he left New York State prior to the expiration of his parole; that in April 1939 he was arrested in this State for violation of his parole, turned over to New York police authorities, and thereafter returned to Sing Sing Prison, from which he was released in January 1940 on further parole, expiring February 4, 1941.

At the hearing, petitioner testified that he had not been convicted of any crime other than the attempted burglary and that he had no other criminal record. He did not reveal his imprisonment from April 1939 to January 1940, but, on the contrary, claims that he resided in Brooklyn during that period.

In view of petitioner's suppression of material facts at the hearing (cf. Re Case No. 173, Bulletin 504, Item 7), his unsavory record, and his violation of parole during the past five years, I

conclude that it would be detrimental to public interest to permit him to become associated with the liquor industry at this time, and hence will not exercise my discretionary authority to lift his disqualification.

The petition is therefore denied.

ALFRED E. DRISCOLL  
Commissioner.

Dated: March 4, 1943.

5. MILITARY FORCES - SALE AND SHIPMENT OF SACRAMENTAL WINES FOR RELIGIOUS PURPOSES TO ARMY, NAVY OR MARINE SERVICE CHAPLAINS BY LICENSED MANUFACTURERS, WHOLESALERS AND TRANSPORTERS PERMISSIBLE.

March 4, 1943

Mr. James Moroney  
Philadelphia, Pa.

Dear Mr. Moroney:

I have before me your letter of February 26th in reference to the sale and shipment of sacramental wines to army, navy or marine corps service chaplains or military officers making purchases on their behalf.

My Notice of February 25th re the sale of alcoholic beverages to army personnel applies only to the sale and shipment of alcoholic beverages sold at wholesale. It does not apply to retail sales.

According to our records, you hold both a Wine Wholesale license and a Sacramental Wine permit in New Jersey, pursuant to which you are allowed to sell sacramental wines direct to duly organized church authorities. Such sales constitute retail sales within the contemplation of the Alcoholic Beverage Law, and hence my aforesaid ruling of February 25th does not apply thereto.

It follows that, in so far as this Department is concerned, there is no objection to your selling and shipping sacramental wines for religious purposes direct to army, navy or marine service corps chaplains or military officers making such purchases on behalf of the aforesaid chaplains.

Very truly yours,  
ALFRED E. DRISCOLL  
Commissioner.

6. DISCIPLINARY PROCEEDINGS - PERMITTING BRAWL ON LICENSED PREMISES IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 20 - LICENSEE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT ON EXPIRATION OF 25 DAYS AND TRANSFER OF LICENSE.

In the Matter of Disciplinary Proceedings against  
 IDA RILEY  
 17 Third Avenue  
 Long Branch, N. J.,  
 Holder of Plenary Retail Consumption License C-41, issued by the Board of Commissioners of the City of Long Branch.

CONCLUSIONS AND ORDER

Ida Riley, Pro Se.  
 Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded guilty to the following charge:

"On Sunday, February 7th, 1943, between the hours of 3:00 and 5:00 P.M., you allowed, permitted and suffered a disturbance and brawl in and upon your licensed premises, in violation of Rule 5 of State Regulations No. 20."

The Department file discloses that, on the afternoon in question, three corporals stationed at Fort Monmouth stopped at the licensed premises. During the course of their stay they noticed James Riley, husband of the licensee, who was tending bar, pick up a heavy club, go out the front entrance and strike at several dogs milling around the front of the premises. On Riley's return, one of the corporals apparently complained to Riley about his treatment of the dogs, whereupon Riley retorted that if the corporal did not like his actions, he could leave. The corporal is reported to have stated that he would leave as soon as he finished his beer. Before he had the opportunity to do so, Riley, from behind the bar, swung at and struck him on the arm and the hand with the same club. The following day it was necessary for the corporal to be treated at the infirmary of the Fort for injuries received as a result of Riley's use of the club.

On Tuesday, February 9, 1943, James Riley pleaded guilty to a charge of assault and battery growing out of this incident and was fined by the Police Recorder of Long Branch, N. J.

The voluntary statement signed by Riley clearly indicates that there was nothing in the conduct of the corporal that could reasonably be considered as provocation for the attack. Regardless, however, of who was responsible for any argument that may have arisen between the parties, the bartender was entirely wrong in striking the soldier with a club. The licensee is accountable for the unreasonable and excessive use of force by her bartender. Re Polster, Bulletin 388, Item 10; Re Esposito, Bulletin 461, Item 5.

A report in the file from the military authorities at Fort Monmouth, recommending that the licensed premises be placed "off-limits", indicates that Riley, in addition to the present incident,

had on previous occasions been quarrelsome and belligerent with customers. The "off-limits" order was issued and made effective on February 18, 1943.

The licensee and her husband are apparently no longer present on the premises, having, on February 10, 1943, three days after the disturbance involved herein, entered into an agreement with Frank Squillante for the purchase of the business and transfer of the license, application for which has already been made. Squillante paid a substantial amount of money on account of the purchase and has, since February 10, 1943, managed the premises for the licensee and will continue to do so until the transfer of the license to him. In all probability that transfer will not be consummated until the present proceedings have been terminated and these Conclusions and Order thereon have been entered. The penalty, therefore, will undoubtedly actually be suffered by the purchaser, who, although employed by the licensee since January 9, was not present at the time of the attack or in any manner implicated in the prior incidents complained of by the military authorities.

In order to make certain that the licensee does not reap any benefit from my disposition to consider the prospective purchaser as the party who will be principally affected by the penalty, I shall suspend the license of Ida Riley for the balance of the term with the provision that, if the transfer of the license to Frank Squillante is granted by the local issuing authority subject to said suspension, application may be made by him to me to vacate the suspension after the expiration of twenty-five days from the effective date thereof.

Accordingly, it is, on this 5th day of March, 1943,

ORDERED, that Plenary Retail Consumption License No. C-41, issued by the Board of Commissioners of the City of Long Branch to Ida Riley, for premises 17 Third Avenue, Long-Branch, be and the same is hereby suspended for the balance of the term, effective immediately; and it is further

ORDERED, that if and when a transfer of the license to Frank Squillante is granted by the local issuing authority, application may be made to me by said Frank Squillante to vacate said suspension; provided, however, in no event shall said suspension be vacated prior to the expiration of twenty-five days from the effective date hereof.

ALFRED E. DRISCOLL  
Commissioner.

7. DISCIPLINARY PROCEEDINGS - PURCHASE OF STOLEN ALCOHOLIC BEVERAGES BY RETAILER FROM NON-LICENSEE, IN VIOLATION OF RULE 15 OF STATE REGULATIONS NO. 20 - POSSESSION OF ILLICIT ALCOHOLIC BEVERAGES CONTRARY TO R. S. 33:1-2, IN VIOLATION OF R. S. 33:1-50 - FAILURE TO FILE TAX REPORTS - 30 DAYS' SUSPENSION.

In the Matter of Disciplinary  
Proceedings against

LUCA SUPPA  
175 - 8th Avenue  
Newark, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump-  
tion License C-883, issued by  
the Municipal Board of Alcoholic  
Beverage Control of the City of  
Newark.

Ferdinand D. Masucci, Esq., Attorney for Defendant-Licensee.  
Abraham Merin, Esq., Attorney for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads not guilty to the following amenda-  
tory and supplemental charges:

"1. On or about August 24, 1942, you purchased alco-  
holic beverages from a person not the holder of a New Jersey  
manufacturer's or wholesaler's license nor pursuant to  
special permit, in that you purchased twelve cases of as-  
sorted alcoholic beverages from Anthony F---- and Matteo  
R----, which alcoholic beverages had been stolen on August  
23, 1942 from Sam M----, in Newark, New Jersey; said pur-  
chase being in violation of Rule 15 of State Regulations  
No. 20.

"2. On or about the date aforesaid, you possessed  
illicit alcoholic beverages on your licensed premises, in  
that you possessed on such premises twelve cases of  
assorted alcoholic beverages which had been sold and pur-  
chased in this State without requisite authority of any  
license or permit and, hence, contrary to R. S. 33:1-2;  
the possession of such alcoholic beverages by you being in  
violation of R. S. 33:1-50.

"3. You failed, in violation of R. S. 54:45-1, to  
file with the State Tax Commissioner, as there required, a  
report disclosing truly the alcoholic beverages distributed,  
transported, imported, purchased, sold and stored by you  
during the month of August, 1942, in that you failed to  
report your purchase and storage of the aforesaid twelve  
cases of assorted alcoholic beverages."

At the hearing, the attorneys for the Department and for the  
defendant, respectively, stipulated that the twelve cases of liquor  
found on the licensed premises were stolen on August 23, 1942 from one  
Sam M----. It was also stipulated that the tax reports of the licen-  
see failed to disclose the purchase and storage of said alcoholic  
beverages.



Peter, a son of the defendant, testified that because of his father's prolonged illness he had managed the tavern for approximately nine months prior to August 23, 1942. On that night, Peter made a purchase of twelve cases of alcoholic beverages from two young men. These men, he states, informed him that the liquor was part of the stock of a tavern, the proprietor of which had been adjudicated a bankrupt. Eight days thereafter, two detectives arrested the defendant, his son and his brother Michael. They were held in custody after having been informed that the liquor purchased on August 23, 1942 was stolen merchandise. Peter admitted that he did not include the illicit liquor in his monthly report to the State Tax Department.

The defendant testified that the first time he had any knowledge whatsoever of the illegal transaction was upon his arrest on August 31, 1942. He stated that during his illness everything connected with the management of the tavern business, including the preparation of the tax reports, was delegated to his son. Assuming the correctness of licensee's story, he must, nevertheless, be held strictly accountable, irrespective of personal fault, for the acts of his employees. See Re Jacobs, Bulletin 316, Item 8; Re Almac, Bulletin 554, Item 10.

Criminal charges that were preferred against the defendant-licensee predicated on the purchase of the stolen goods were dismissed. Peter received a suspended sentence of nine months in the penitentiary for his part in the unlawful transaction.

By way of explanation for his failure to report the liquor in question, Peter says he neglected to include it because the liquor had been returned to the owner. I am very reluctant to place any credence in the explanation advanced by Peter. There is no doubt that he was aware that the transaction was illegal from its inception. The failure to report the stolen merchandise was just another method used in an attempt to avoid discovery.

I have no other alternative than to find the defendant-licensee guilty on all charges preferred against him. These violations go to the very root of control. A retail licensee's stock of liquor must be legitimate in origin and must be purchased from a licensed dealer. I would be inclined to revoke the license of the defendant herein if it were not for the fact that previous to this offense he operated his establishment without misconduct for a period of approximately nine years.

In Re Mylor, Bulletin 535, Item 6, due to the presence of aggravating circumstances, a suspension of the license for sixty days was imposed upon conviction of the licensee for similar violations, as appear in the instant case. Also, in the Mylor case the licensee dealt directly with the purveyor of the stolen merchandise. In the present case, the liquor was purchased by an employee without the defendant-licensee having any knowledge of the illegal transaction. Therefore, I shall impose a penalty of thirty days in this case.

Accordingly, it is, on this 5th day of March, 1943,

ORDERED, that Plenary Retail Consumption License C-883, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Luca Suppa for premises at 175 Eighth Avenue, Newark, be and the same is hereby suspended for a period of thirty (30) days, commencing at 2:45 A.M. March 8, 1943, and terminating at 2:45 A. M. April 7, 1943.

ALFRED E. DRISCOLL  
Commissioner.

8. 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

SAUL KOCH  
314 - 15th Avenue  
Newark, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Distri-  
bution License D-31, issued by  
the Municipal Board of Alcoholic  
Beverage Control of the City of  
Newark.

Saul Koch, Pro Se.  
Abraham Merin, Esq., Attorney for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

The defendant pleads guilty to the following charge:

"On or about February 2, 1943, without having first obtained a special permit so to do, you sold one pint bottle of Four Roses Rye Whiskey, a Blend of Straight Whiskies, below the minimum consumer's price published in Bulletin 536 of this Department, in violation of Rule 6 of State Regulations No. 30."

The Departmental file discloses that, on February 2, 1943, investigators of the Department of Alcoholic Beverage Control entered the licensed premises. The licensee was in charge and, after some conversation with one of the investigators, sold him a pint bottle of Four Roses Rye Whiskey for \$2.10. The Fair Trade price of this whiskey, as listed in Bulletin 536, at that time was \$2.22.

The defendant has no previous record. In view of the fact that this is his first offense and there being no aggravating circumstances surrounding the case, I shall suspend his license for a period of ten days, less five for the guilty plea, or a net suspension of five days.

Accordingly, it is, on this 5th day of March, 1943,

ORDERED, that Plenary Retail Distribution License D-31, heretofore issued to Saul Koch by the Municipal Board of Alcoholic Beverage Control of the City of Newark for premises 314 - 15th Avenue, Newark, be and the same is hereby suspended for a period of five (5) days, commencing at 2:45 A. M. March 8, 1943, and terminating at 2:45 A. M. March 13, 1943.

ALFRED E. DRISCOLL  
Commissioner.

9. APPELLATE DECISIONS. - HAREVICH AND VILTOWSKY v. NEWARK.

ANTHONY HAREVICH and WASILY	)	
VILTOWSKY,	)	
	)	
Appellants,	)	
	)	
-vs-	)	ON APPEAL
	)	CONCLUSIONS AND ORDER
	)	
MUNICIPAL BOARD OF ALCOHOLIC	)	
BEVERAGE CONTROL OF THE CITY	)	
OF NEWARK,	)	
	)	
Respondent.	)	
	)	
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Abe W. Wasserman, Esq., Attorney for Appellants.  
Raymond Schroeder, Esq., by Louis A. Fast, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from a twenty-day suspension of License C-576 held by appellants herein for premises 143 Howard Street, Newark.

After appellants had pleaded non vult to charges of selling alcoholic beverages to a minor in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20, respondent suspended their li- cense for a period of twenty days commencing March 1, 1943. On February 26, 1943 the present appeal was filed and, at that time, I entered an order providing that the appeal should not act as a stay of the suspension imposed pending a hearing to be held on March 5, 1943. The appeal herein was specifically limited to the penalty im- posed, appellants having alleged in their petition of appeal that the penalty of twenty days' suspension was excessive and improper.

I have carefully considered the arguments made by the attor- neys for the respective parties at the hearing held March 5, 1943, and conclude that the penalty imposed was not unreasonable or excess- ive. Creston Holding Co. v. Belleville, Bulletin 544, Item 2. I shall affirm the action of respondent.

Accordingly, it is, on this 8th day of March, 1943,

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

ALFRED E. DRISCOLL.  
Commissioner.

10. LICENSEES - INDUCTION INTO MILITARY SERVICE - RE DE MARTINI.  
(BULLETIN 527, ITEM 8) MODIFIED TO PERMIT NON-CITIZENS TO SIGN  
APPLICATIONS FOR RENEWAL OR TRANSFER PURSUANT TO APPROVED POWER  
OF ATTORNEY.

March 11, 1943

Frank Sahl, Esq.  
Woodbury, N. J.

Dear Sir:

I have your letter of February 22, 1943, advising that Anna Gastauts, a national of Lithuania, has received an extension of the plenary retail consumption license issued to the late Ignac Allekna, and that she now holds such license as executrix of his estate.

Although Anna Gastauts, by reason of her non-citizenship, may not hold a liquor license in her individual name, she may do so in her representative capacity as executrix of the decedent's estate. Re Begley, Bulletin 79, Item 5.

I understand that the executrix intends to transfer the license to her son, who, although fully qualified as a licensee, is presently serving as a member of our armed forces. I assume, of course, that the son is to be the sole legal and equitable owner of the license and the business conducted thereunder, and will not hold the license as a "front" for his mother or any other unqualified person.

By a recent amendment to the Alcoholic Beverage Law (R. S. 33:1-25), applications for liquor licenses may be made by an attorney-in-fact on behalf of an applicant in the military service of the United States. Such attorney-in-fact must be so appointed by a power of attorney in form approved by me and should include the pertinent requisites embodied in Re De Martini, Bulletin 527, Item 8.

You inquire whether the executrix, who is not a citizen of this country or protected by a reciprocal trade treaty, may act as her son's attorney-in-fact when the license is transferred to him. A liberal interpretation of the cited statute would, in the interest of those licensees required to serve their country, appear to be warranted. Heretofore, I have permitted non-residents to act in such capacity. Re De Martini, supra. I now rule that non-citizens may not only manage and conduct a licensed liquor business on behalf of an applicant in the military service of this country, but may also, pursuant to an approved power of attorney, apply for renewals and transfers of the liquor license. To this extent, the previous ruling in Re De Martini, supra, is hereby modified.

A person not qualified as to citizenship, however, may not sell, serve or solicit the sale of any alcoholic beverages. If, therefore, Anna Gastauts is to be appointed as her son's attorney-in-fact, she may, pursuant to an employment permit first obtained from this Department, be employed on the licensed premises but only in a capacity which does not entail the sale or service of alcoholic beverages.

Very truly yours,  
ALFRED E. DRISCOLL  
Commissioner.

11. DISCIPLINARY PROCEEDINGS - CHARGE OF POSSESSING ILLICIT LIQUOR  
DISMISSED.

In the Matter of Disciplinary )  
Proceedings against )  
 )  
VITTORIA CASTLE, a corporation, )  
113-117 Eighth Avenue and )  
2 Summer Avenue )  
Newark, N. J., )  
 )  
Holder of Plenary Retail Consump- )  
tion License C-940, issued by the )  
Municipal Board of Alcoholic )  
Beverage Control of the City of )  
Newark. )  
----- )

CONCLUSIONS  
AND ORDER

George R. Astley, Esq., Attorney for Defendant-Licensee.  
Nathan Davis, Esq. and Abraham Merin, Esq., Attorneys for the  
Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee pleaded not guilty to charges alleging that he possessed a quart bottle labeled "Seagram's Pedigree Straight Rye Whiskey Bottled in Bond (Canadian)" and a 4/5 quart bottle labeled "King William IV V.O.P. Brand Scotch Whisky A Blend", which bottles contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

On May 26, 1942 Federal agents tested forty open liquor containers at defendant's premises and seized the two bottles in question. Upon receipt of the reports from the Federal authorities indicating that both bottles appeared to be "refills", the Department of Alcoholic Beverage Control instituted proceedings against the licensee. It was then learned, for the first time, that the Federal chemist, when analyzing the contents of the Seagram's Pedigree whiskey bottle, inadvertently used, for comparative purposes, a bottle which was not identical with that seized. An authentic sample was thereupon obtained which, upon analysis by both the State and Federal chemists, disclosed that the seized bottle of Seagram's Pedigree Whiskey compared favorably with the analysis of the contents of the genuine bottle and hence did not contain whiskey which was not genuine as labeled.

Thus the Department was left with proof only of one bottle of allegedly "refilled" liquor, namely, the bottle labeled "King William IV V.O.P. Brand Scotch Whisky A Blend."

For the past half year, as a matter of experiment, it has been the policy of this Department not to institute proceedings against a licensee where only one questionable bottle of so-called illicit alcoholic beverages is involved unless (1) the discrepancy in content is such as to permit only of the positive and unmistakable inference that the bottle has been "refilled" with another alcoholic beverage, or (2) the licensee has a prior record of a similar violation or has been previously warned that a discovery of any questionable bottle or bottles on his licensed premises would result in the institution of disciplinary proceedings. In the absence of such circumstances, the Department has, upon seizure of only one such bottle, given the licensee the benefit of the doubt concerning the "refill", but has notified him, however, that a future recurrence would be cause for instituting proceedings against him.

In the instant case, the nature of the variances found in the one bottle of King William Whisky, although substantially not in conformity with the label, does not incontrovertibly indicate the presence of "refilled" liquor. Since the defendant has no previous record of any disciplinary proceedings having heretofore been instituted against it and has never received any warning respecting the contents of its liquor bottles, I would not have brought this charge against the licensee had I originally known that only one questionable bottle was here involved. Justice and fairness dictate that, under such circumstances, I dismiss the charge. The inadvertent mistake made by the Federal chemist should not inure to the detriment of the licensee.

However, the licensee is hereby warned that should any other bottle or bottles of alcoholic beverages be discovered on its licensed premises, the contents of which vary from that labeled, disciplinary proceedings will be instituted against it for suspension or revocation of its license.

Accordingly, it is, on this 11th day of March, 1943,

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

ALFRED E. DRISCOLL  
Commissioner.

12. DISCIPLINARY PROCEEDINGS - PERMITTING FEMALE EMPLOYEE TO ACCEPT DRINKS, IN VIOLATION OF RULE 22 OF STATE REGULATIONS NO. 20 - SALE OF ALCOHOLIC BEVERAGES TO MINOR, IN VIOLATION OF R. S. 33:1-77 - 30 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary  
Proceedings against

JOHN MORGENROTH  
333 Market Street  
Paterson, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump-  
tion License C-330, issued by the  
Board of Alcoholic Beverage Control )  
of the City of Paterson. )  
----- )

Watson, Hengeveld & Miller, Esqs., Attorneys for Defendant-Licensee.  
Milton H. Cooper, Esq., Attorney for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

Defendant pleads guilty to charges which may be summarized as follows:

1. On November 29, 1942 licensee permitted a female employee, hostess or entertainer, to accept beverages at the expense of customers and patrons, in violation of Rule 22 of State Regulations No. 20 and Rule 6 of Rules and Regulations concerning Alcoholic Beverages adopted June 28, 1935 by the Board of Aldermen of the City of Paterson.

2. On December 26, 1942, and on divers other occasions, licensee sold alcoholic beverages to Pvt. Fred D. V----, a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

As to (1): On the evening of November 29, 1942 investigators of the Department of Alcoholic Beverage Control were in the licensed premises. They observed a female entertainer accepting drinks from patrons. From the evidence it is obvious that this was not an uncommon practice. The defendant admits he served the drinks. In mitigation, the defendant states that he did not know that it was a violation of the law for a female employee to accept beverages at the expense of patrons. Ignorance of the law is no excuse. This is particularly so within the field of alcoholic beverage control. The application for and the acceptance of a license to sell intoxicating beverages by the licensee implies a warranty on his part that he is familiar with the control laws and will obey the same.

As to (2): The departmental file discloses that, on December 26, 1942, and on divers other occasions, alcoholic beverages were sold to Pvt. Fred D. V----. The soldier was nineteen years of age. Defendant states that the soldier appeared to be well over twenty-one. He describes him as large and exceptionally dark of complexion. The sale of alcoholic beverages to minors is a serious violation, and more especially when the minor is a member of the armed forces of the United States. Licensees must learn not to trust their judgment as to ages. The preceding suggestion is peculiarly applicable in those cases where the desire to serve is frequently father to the thought that the prospective patron may be over twenty-one years of age. The only safe rule for licensees to follow is: "When in doubt, do not serve." Licensees should follow the procedure outlined in R. S. 33:1-77. In every instance they should request prospective patrons who appear to have reached that stage in life where there may be some reasonable question as to whether they are under or over twenty-one years of age, to either submit proof positive of their age or to represent in writing, over their respective signatures, that they are in fact twenty-one or over. In addition, it is to be noted that those seeking to establish a valid defense to a charge involving the sale of liquor to a minor must prove: (a) that the minor falsely represented in writing that he or she was twenty-one years of age or over; (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one years of age or over; and (c) that the sale was made in good faith, relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one years of age or over. R. S. 33:1-77, as amended P.L. 1939, c. 228.

As to penalty: I am impressed by defendant's frankness and honest disclosure of the facts. There was no attempt on his part to evade the issue. He has no previous record. I shall take these facts into consideration in arriving at my decision.

As to (1): I shall suspend the operation of defendant's license for a period of twenty days. See Re Kovacs, Bulletin 498, Item 4.

As to (2): I shall suspend the operation of defendant's license for a period of ten days. See Re William Kelly, Bulletin 540, Item 5.

I shall remit five days for the guilty plea, making a total suspension of twenty-five days.

Accordingly, it is, on this 11th day of March, 1943,

ORDERED, that Plenary Retail Consumption License C-350, issued to John Morgenroth by the Board of Alcoholic Beverage Control of the City of Paterson for premises 333 Market Street, Paterson, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 3:00 A.M. March 15, 1943, and terminating at 3:00 A.M. April 9, 1943.

ALFRED E. DRISCOLL  
Commissioner.

13. DISCIPLINARY PROCEEDINGS - SUSPENSION FOR BALANCE OF TERM WITH  
LEAVE TO PETITION TO LIFT AFTER EXPIRATION OF 30 DAYS AND  
CORRECTION OF ILLEGAL SITUATION - ILLEGAL SITUATION CORRECTED  
(SUSPENSION IN EFFECT FOR 99 DAYS) - APPLICATION TO LIFT GRANTED.

In the Matter of Disciplinary )  
Proceedings against )

WILHELM FERDINAND LEHTONEN )  
Union Avenue )  
Lakehurst, N. J., )

ON PETITION  
ORDER

Holder of Plenary Retail Consump- )  
tion License C-4, issued by the )  
Borough Council of the Borough )  
of Lakehurst. )  
- - - - - )

Robert A. Lederer, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

On December 2, 1942, effective immediately, I suspended the license of the defendant herein for the balance of its term after he had pleaded guilty to charges alleging, in substance, that he was a "front" for John H. Wuorela, a person disqualified to hold a liquor license in this State by reason of his inability to comply with the residence requirement of the law. Re Lehtonen, Bulletin 540, Item 10. In the order suspending the license, leave was given to a duly qualified purchaser of the same, following the approval of a transfer by the local issuing authority, to apply for an order lifting the suspension after the expiration of thirty days from December 2, 1942.

A petition has now been presented by Agnes Bowman, to whom the license in question was transferred, from which it appears that the license and business conducted thereunder have been sold to her and that she is the only person now interested in said license and business, and that she is fully qualified to hold a license in her own right. It also appears that the transfer of the license to Agnes Bowman has been approved by the local issuing authority subject to the entry of an order by me lifting the suspension heretofore imposed against this license.

Since it appears that the unlawful situation has now been corrected and that more than thirty days have elapsed since the suspension became effective, and that the applicant herein is apparently fully qualified to hold the license,

It is, on this 11th day of March, 1943,

ORDERED, that the suspension heretofore imposed against Plenary Retail Consumption License C-4, issued by the Borough Council of the Borough of Lakehurst for premises on Union Avenue, Lakehurst, be lifted and is hereby restored to full force and operation, effective immediately.

*Alfred E. Griswold*  
Commissioner.

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