

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

BULLETIN 554

FEBRUARY 18, 1943.

1. COURT DECISIONS - NEW JERSEY SUPREME COURT - GRANT LUNCH CORPORATION v. ALFRED E. DRISCOLL, COMMISSIONER - COMMISSIONER SUSTAINED.

GRANT LUNCH CORPORATION,)
Prosecutor,)
-vs-)
ALFRED E. DRISCOLL, COMMISSIONER)
OF THE STATE DEPARTMENT OF)
ALCOHOLIC BEVERAGE CONTROL,)
Defendant.)

NEW JERSEY SUPREME COURT
No. 248 October Term 1942.

Submitted October Term 1942. Decided
On rule to show cause why writ of certiorari should not issue.
Before Justices Case, Donges and Colie.
For prosecutor, Morris M. Schnitzer; Kasen, Schnitzer & Kasen.
For respondent, Edward J. Dorton.

The opinion of the court was delivered by

Case, J. Prosecutor seeks a writ of certiorari to review the proceedings and record of the New Jersey Department of Alcoholic Beverage Control wherein the commissioner adjudged that the prosecutor had sold a half gallon bottle of Hiram Walker's "93" rye Whiskey below the minimum consumer price and in violation of Rule 6 of State Regulation No. 30 and ordered that the plenary retail consumption license held by the prosecutor should be suspended for a period of five days. The parties have stipulated that in the event the court should direct a writ to issue the record now before us should be considered as returned pursuant to the writ, to the end that the merits of the controversy be now determined. The pertinent statutes are the Fair Trade Act, R. S. 56:4-3, et seq. and ch. 208, Pamph. Laws 1938 (supplementing R. S. 33:1 wherein the State Commissioner of Alcoholic Beverage Control was given the discretionary authority by rule or regulation to prohibit or regulate the sale of alcoholic beverages in violation of any fair trade contract entered into pursuant to ch. 4, Title 56 of the Revised Statutes). The commissioner promulgated rules and regulations designated "Regulations No. 30", Rules 1 to 8 inclusive, whereby a retail licensee was prohibited upon the penalty of revocation or suspension of license from selling or offering for sale any product covered by a contract between a manufacturer or wholesaler and any licensed New Jersey retailer except at the price stipulated in such contract or the price list accompanying the same, when the contract and price list should have been filed and published and duly bulletined.

On September 27, 1941, prosecutor, which was then the holder of a plenary retail consumption license at 197-201 Market Street and 6-8 Beaver Street, in the City of Newark, sold at that place by mistake and not willfully, but nevertheless in violation of a contract between Hiram Walker Incorporated, as manufacturer or wholesaler, and Gus Waldron Wine and Liquor Store, a licensed retailer, and price lists going therewith and the bulletins of the department bearing thereon, all duly circulated, a bottle of rye Whiskey at the price of \$3.19 as against the current "fair trade" price of \$3.29.

Prosecutor contends (1) that paragraph 6 of Regulation 30, where invoked to punish sales induced by innocent, non-negligent mistakes as to price, violates due process of law in that it does not express its scope and intended application to such cases with the clarity, lucidity and precision requisite for penal enactments; (2) that Regulation 30, when invoked to punish sales resulting from innocent, non-negligent errors, exceeds the statutory authority under which the regulation was promulgated; (3) that the suspension of license ordered by the defendant will entail a direct loss of \$2,572.20 to the prosecutor and \$518.43 to 21 of its employees and is so grossly excessive and disproportionate to the nature and quality of the offense charged against the prosecutor as to require mitigation or reversal.

The offense charged against prosecutor was not a crime; it was a violation of rules and regulations duly set up under statutory authority in the control of a business that for many years has been lawfully subjected to regulation by statute and under statutory authority. The sale of liquor has never been a business of right in this state. The legislature has uniformly granted wide discretion to officers charged with duties with respect to the granting and revoking of liquor licenses. The commissioner is empowered by the 1938 statute, supra, to make the regulations necessary, in his judgment, in order to secure a fair administration of the law permitting the sale of intoxicating liquor and the fixing of a price applicable alike to all dealers and all customers. It was within the authority of the State Commissioner of Alcoholic Beverage Control to impose the regulation under review and to suspend the license of a violating licensee, Gaine v. Burnett, 122 N.J.L. 39, affirmed 125 N.J.L. 317. The right extensively to regulate the sale of intoxicating liquors by retail has been given broad judicial support, Meehan v. Excise Commissioners, 73 N.J.L. 382, 75 id. 557, Franklin Stores Co. v. Burnett, 120 N.J.L. 596, Phillipsburg v. Burnett, 125 N.J.L. 157. The prosecutor's argument presents no sound reason for distinguishing the foregoing decision.

Although the sale was not accomplished in purposeful violation of the regulations it was such an act as would have been avoided had the prosecutor's clerks performed their duty; and in any event it was a flat violation of lawful regulations duly promulgated and fully grounded in the statute. Prosecutor does a large business. But it operates under a unit license and the fact that it does a large business, from which it presumably makes commensurate profits, is not a reason why, when it violates the law, it should not be punished by an interruption of the license by grace of which that business is done. The suspension of the license for a period of five days was within the lawful discretion of the commissioner. The volume of business done by the prosecutor does not suffice to change that official act into an abuse.

We are not controlled by the stipulation of counsel; nevertheless we deem it proper, under the circumstances, to place the case in the status of one wherein the writ has issued, been returned, decided adversely to the prosecutor, and therefore dismissed, with costs.

2. APPELLATE DECISIONS - WAGNER AND FERRIS v. PHILLIPSBURG.
WAGNER v. PHILLIPSBURG.
WAGNER v. PHILLIPSBURG AND VARGO.

WILSON A. WAGNER and BERNARD)
FERRIS,)
Appellants,)

-vs-

BOARD OF COMMISSIONERS OF THE)
TOWN OF PHILLIPSBURG,)
Respondent)

#1155. -----)
WILSON A. WAGNER,)
Appellant,)

-vs-

BOARD OF COMMISSIONERS OF THE)
TOWN OF PHILLIPSBURG,)
Respondent)

#1173 -----)
WILSON A. WAGNER,)
Appellant,)

ON APPEAL
CONCLUSIONS

-vs-

BOARD OF COMMISSIONERS OF THE)
TOWN OF PHILLIPSBURG and)
FRANK J. VARGO,)

#1174 -----)
Respondents)

Robert B. Meyner, Esq., Attorney for Appellants.
Sylvester Smith, Jr., Esq., Attorney for Respondent Board of
Commissioners of the Town of Phillipsburg.
Frank J. Kingfield, Esq., Attorney for Respondent-Licensee
Frank J. Vargo.
Lewis S. Beers, Esq., Attorney for the Landlord and Warren
County Building & Loan Association.

BY THE COMMISSIONER:

These appeals were consolidated at hearings held on August 20, 1940 and September 12, 1940, prior to the time I assumed office as Commissioner. Because of the changed circumstances hereinafter recited, no orders will be entered herein. For the purpose of disposing of these pending appeals, I shall enter Conclusions which of necessity will be merely advisory.

In Case #1155 the appellants, who held a plenary retail consumption license for the fiscal year 1939-40 for premises 470 South Main Street, appealed from denial of transfer of their licenses from said premises to 480 South Main Street. The transfer was denied on June 19, 1940.

In Case #1173 Wilson A. Wagner, one of the partners mentioned in the first appeal, appealed from denial of his application for a plenary retail consumption license for the fiscal year 1940-41 for premises 480 South Main Street. His application was denied on July 31, 1940.

In Case #1174 said Wilson A. Wagner appealed from the issuance of the same type of license for the fiscal year 1940-41 to Frank J. Vargo for premises 470 South Main Street.

As to Case #1155: Because of some dispute with the landlord at 470 South Main Street, Wagner and Ferris vacated said premises in June 1940 and sought a transfer of their license to 480 South Main Street. No question was raised as to the qualifications or prior conduct of said licensees, or as to the suitability of the proposed premises. I have examined the record carefully and can find no valid reason to support the action of the Board of Commissioners in denying said transfer. However, since the license in question expired by its terms on June 30, 1940, no order will be entered in this case.

As to Cases #1173 and #1174: On June 11, 1940 Wilson A. Wagner, who was then one of the partners conducting business at 470 South Main Street, applied to respondent Board for a plenary retail consumption license for the fiscal year 1940-41 for premises 480 South Main Street. Wagner had never held a license for the latter premises. On July 3, 1940 Frank J. Vargo filed with respondent Board an application for a plenary retail consumption license for the fiscal year 1940-41 for premises 470 South Main Street, for which Wagner and Ferris had held a license during the prior fiscal year. Hence, at the time Vargo's license was granted, there was pending before respondent Board an application by Wagner for a license at 480 South Main Street and an application by Vargo for premises 470 South Main Street. Because of a local regulation limiting the number of licenses, only one of said applications could be granted. I believe that, under all the circumstances, it was within the sound discretion of the local Board to issue a license to either Wagner or Vargo for the fiscal year 1940-41. Gimber v. Galloway, Bulletin 427, Item 9, and cases therein cited. Apparently both applicants were fully qualified, and I find no evidence that respondent Board abused its discretion in granting the license to Vargo and refusing a license to Wagner.

It appears from our records that Frank J. Vargo renewed his license for premises 470 South Main Street for the fiscal year 1941-42 but that he failed to renew said license for the fiscal year 1942-43, and that a license for said premises has been issued for the present fiscal year to another individual who is not a party to this proceeding.

The action of respondent Board of Commissioners in Cases #1173 and #1174 does not appear to have been arbitrary or unreasonable. However, in view of the fact that the license in question has expired, and that respondent Frank J. Vargo no longer holds a license, no order will be entered in these cases.

ALFRED E. DRISCOLL
Commissioner.

Dated: February 8, 1943.

3. MORAL TURPITUDE - CRIME OF RECEIVING STOLEN GOODS FOUND TO INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - LAW-ABIDING CONDUCT FOR FIVE YEARS LAST PAST AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

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. 200.
- - - - -)

BY THE COMMISSIONER:

In 1932 petitioner, then about twenty years of age, was convicted in police court of assault and battery and fined \$20.00. In 1935, in a Pennsylvania court, he pleaded nolo contendere to the charge of violating the Firearms Act and was placed on probation for one year. In 1936 he was convicted in this State of receiving bars of silver stolen from a refining company and placed on probation for five years.

Receiving stolen goods is a crime which ordinarily involves moral turpitude. Re Case No. 169, Bulletin 479, Item 6. No facts have here been presented which eliminate that element. Hence, petitioner is disqualified from holding a liquor license or working for a liquor licensee in this State. R. S. 33:1-25, 26.

Petitioner seeks removal of such disqualification, pursuant to R. S. 33:1-31.2, upon claim that he has led a law-abiding life since his conviction in 1936.

The evidence shows that petitioner has lived in one community in this State for the last twenty years. He worked in a butcher shop, in a copper works, and then became a professional boxer. In 1933, while hunting, he met with an accident which resulted in the loss of an arm. In 1934 his family gave him money to open a licensed tavern, which he conducted for a little over a year. From 1935 to 1937 he was unemployed, and it was during this time that he became involved in the stolen silver case.

In 1937 he went to work in his brother's (later his mother's) licensed tavern, located in a building owned by his mother. The tavern was evidently a family affair in which such of petitioner's brothers as were available "pitched in" and helped in the business.

In December 1941 petitioner's mother died and bequeathed the tavern to him. After her death her license was extended to one of petitioner's brothers, who was the executor of his mother's will, and the license was renewed for the current year pending the outcome of petitioner's case.

In arranging for the extension of the license, and in the course of various discussions with his family as to the legal procedure to be followed in settling his mother's estate and transferring the license to petitioner, he says that he discovered for the first time that there was some question as to whether he was qualified to hold a liquor license because of his criminal record. Thereupon, petitioner visited the Department and voluntarily filed the instant petition, and immediately discontinued working at the tavern.

One of the Commissioners of the municipality wherein petitioner resides, who is a Deputy Police Commissioner, and who has known petitioner between eleven and twelve years, appeared as a character witness in his behalf and testified that he considered petitioner's conviction in 1936 to be a youthful misadventure and that "He (petitioner) is very well liked and is a law-abiding citizen, and there isn't a thing either the Chief of Police or anyone has against him, (n)or is there any favor that they wouldn't grant him." He testified further that petitioner conducted the tavern in a very orderly manner and that, although he knew of petitioner's conviction, he was not aware until a week before the hearing that it disqualified him from holding a license.

A police officer of the same community, who has known petitioner for five years, testified that, in the course of his duty, he has had occasion to visit the tavern frequently and that petitioner seems to run an orderly house in a businesslike manner. An acquaintance who met petitioner when he was a boxer and has seen him frequently in the past five or six years, testified that he has been a decent, law-abiding citizen during that period.

In view of the favorable evidence on petitioner's behalf, I shall accept his sworn declaration that he was of the impression that only a person who had served time in jail was disqualified, and hence, that he had been working in the tavern in ignorance of the law. See Re Case No. 96, Bulletin 405, Item 7; Re Case No. 97, Bulletin 407, Item 14; and Re Case No. 161, Bulletin 477, Item 11.

Under these circumstances I would normally lift petitioner's disqualification. What gives me pause is that, some time after the hearing, petitioner, apparently anticipating a favorable decision, resumed his employment at the tavern. This apparently was brought about when his brothers found employment elsewhere. When confronted with this problem while awaiting decision in the case, he should have brought his plight to my attention. Instead, he took the matter into his own hands and went to work at the licensed premises. The question is whether this action on his part should outweigh his otherwise decent and law-abiding conduct during the past six years.

This is not a case where a person, being ruled ineligible, illegally operated a tavern under guise of a "front" or persistently worked as an employee in a retail liquor business in defiance of a specific ruling declaring him ineligible. See Re Case No. 151, Bulletin 515, Item 11. Nor is it a case where an ineligible person, characterized as lacking in the primary element of common fitness, lies at the hearing concerning the fact that he is employed at a licensed tavern. See Re Case No. 99, Bulletin 417, Item 7; Re Case No. 127, Bulletin 443, Item 9.

On the contrary, in the instant case there exists a combination of circumstances which evoke sympathetic consideration. Petitioner's mother apparently sought to leave her business to her physically disabled son in order to provide him with a livelihood. He says that when he made inquiry as to what he was required to do to become the legal owner of the tavern, he found out that he was disqualified from holding a license and therefore came to this Department for relief. After filing his petition for removal of his disqualification, he refrained, for some time, from working in the tavern.

Under these circumstances, I will treat his subsequent action in returning to work in the tavern as an error in judgment rather than an open defiance of the law. However, I wish it to be expressly noted

that this decision is limited solely to the facts of the case and does not alter the rule that a person who seeks lifting of his disqualification must refrain from taking any active interest whatsoever in the liquor industry, pending decision of his application, unless he has express permission from this Department.

I shall therefore consider petitioner to have been law-abiding for at least five years last past, and conclude that his continued association with the alcoholic beverage industry will not be contrary to public policy.

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

ORDERED, that the petitioner's statutory disqualification because of any 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.

4. ELIGIBILITY - FACTS EXAMINED - VIOLATIONS OF NATIONAL PROHIBITION ACT AND ALCOHOLIC BEVERAGE CONTROL LAW FOUND NOT TO INVOLVE MORAL TURPITUDE - APPLICANT DECLARED NOT DISQUALIFIED BY SUCH CONVICTIONS - FALSE ANSWER IN APPLICATION FOR LICENSE - ISSUANCE OF PERMIT WITHHELD FOR 10 DAYS.

February 4, 1943

Re: Case No. 478

In the application for a solicitor's permit, applicant denied that he had ever been convicted of any crime. In 1932 he was convicted for sale and possession of liquor, in violation of the National Prohibition Act, as a consequence of which he was fined \$250.00 and sentenced to thirty days in a county prison. In 1935 he was fined the sum of \$100.00 in a criminal court for possession of illicit alcohol, in violation of the New Jersey Alcoholic Beverage Control Act. The violation of the National Prohibition Act was lacking any aggravating circumstances; hence it does not involve moral turpitude. Re Case No. 351, Bulletin 433, Item 2. As to the single violation of the Alcoholic Beverage Control Act: This, too, lacked aggravating circumstances and, therefore, did not involve moral turpitude. Re Case No. 361, Bulletin 441, Item 11.

Applicant, by way of explanation, testified that he thought that after four years had elapsed it was not necessary to set forth in his application for solicitor's permit the information regarding former convictions of crimes. The questions in said application are simple and clear, and a person with the intelligence of applicant could not very well misunderstand them.

Normally, petitioner could obtain solicitor's permit immediately, but due to his denial under oath relative to criminal convictions in his application for said permit filed with this Department, I recommend that the issuance of the permit be withheld for ten (10) days from the date hereof. Re Case No. 277, Bulletin 324, Item 8.

Clarence E. Kremer
Attorney.

APPROVED:
ALFRED E. DRISCOLL
Commissioner.

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

FAIR TRADE VIOLATIONS - PENALTIES RECONSIDERED.

In the Matter of Disciplinary Proceedings against METROPOLITAN LIQUOR CORP. T/a BETTINGER'S 50 Journal Square Jersey City, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-128, issued by the Board of Commissioners of the City of Jersey City.

John J. Meehan, Esq., Attorney for Defendant-licensee. Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee pleaded non vult to a charge alleging that, on October 31, 1942, it sold a case (twelve 4/5th quart bottles) of Hiram Walker's Imperial Blended Whiskey below the established minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

The licensee has submitted a lengthy explanation of the circumstances surrounding the violation in an attempt to show that it was not committed deliberately, but was the result of an honest mistake. The distinction is important only because of the present policy of this Department with respect to the imposition of penalties in this type of offense.

For more than three years, beginning with November 1938, violations involving sales of alcoholic beverages below fixed prices were given penalties of ten days in the absence of aggravating circumstances or previous record. If the licensee pleaded guilty, five days would be remitted. If, after trial, the licensee proved mitigating circumstances, the ten-day suspension would be correspondingly reduced.

In the case of Re Park Liquors Corp., Bulletin 492, Item 5, decided January 24, 1942, as a result of the argument made by that licensee, a new policy was adopted. It was therein decided to differentiate in penalty between those licensees who deliberately "chiseled" and those who made honest mistakes. Accordingly, in the first Fair Trade case decided thereafter, viz., Re Vogel, Inc., Bulletin 493, Item 10, decided February 9, 1942, where it appeared that the violation was deliberate and there was no previous record, I imposed a penalty of fifteen days, with remission of five days because of the guilty plea. Thus, a deliberate violator, in the absence of aggravating circumstances or previous record, received a penalty five days greater than the so-called innocent violator.

A twelve month trial of this latter policy, however, has demonstrated the difficulty of establishing a workable rule by which it can be determined whether such a violation is deliberate or unintentional. Some unscrupulous licensees have been successful in camouflaging the offense with apparent evidence of innocence. In many cases where the violation appeared to be deliberate, the

commensurate penalty could not be imposed because of the inability to obtain satisfactory proof of that fact. The difficulty, of course, arises from the fact that the determination of whether the offense is deliberate or unwitting is often a question of the licensee's hidden intent at the time the sale is made. This means that, in order to answer the question, it has been necessary to delve into the licensee's mind and inquire whether he was consciously aware when making the sale that he was committing a violation of the Fair Trade regulation. This procedure has proven unsatisfactory because of the lack of a uniform, simple objective test to reach an adequate solution to that problem.

Moreover, the primary purpose of punishment by way of suspension of the license privileges is that it shall serve as a sufficient deterrent against a similar recurrence, not only to the particular licensee concerned in the violation, but as well to all other licensees. That is one of the yardsticks by which the punishment is made to fit the violation. Today, however, there is a greater force extant which has served to reduce materially this type of infraction. I refer to the economic law of supply and demand. There is presently in effect a virtual rationing of alcoholic beverages all the way down the line from the manufacturer to the retailer. True, this rationing has been voluntary and self-imposed because of the growing scarcity of the product, but nevertheless it has been no less effective for that reason. When the demand is thus greater than the supply, the element of competition in the sale of the product is greatly lessened with resultant maintenance of more or less standardized prices for that product. The necessity for "chiseling" on the price in order to meet that of a competitor is no longer a potent factor in this kind of an offense.

The records of this Department concerning the apprehension of Fair Trade violators support the foregoing conclusion. For the six-month period between January and July, 1942, forty Fair Trade cases were instituted. For the last six months of that year, only six such cases were instituted. These figures speak for themselves.

I am of the opinion, in view of all the attendant circumstances, that the old policy applicable to Fair Trade cases should be reinstated. This policy, tersely stated, is as follows: A licensee has the alternative of (1) pleading guilty, or (2) proceeding to a hearing. If he chooses the former, a penalty of ten days will be imposed, with five days remitted for the guilty plea. If there is a previous record or the violation appears to be an aggravated one, the penalty will be correspondingly increased. If the licensee prefers to go to trial and he is found guilty, a ten-day penalty will be imposed in the absence of a previous record. Mitigating or aggravating circumstances may result, respectively, in a decreased or increased penalty.

I call attention to the fact that what I have said regarding the distinction between a deliberate violation and one resulting from an honest mistake is intended presently to apply only to instances of first violations of the Fair Trade regulation. Whether the same ruling will be applicable to a second violation of that regulation will be determined when the occasion arises.

This licensee has no record of any disciplinary proceedings having heretofore been instituted against it. In accordance with the foregoing, therefore, I shall suspend its license for ten days, less five days for the guilty plea, or a net suspension of five days.

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

ORDERED, that Plenary Retail Distribution License D-128, issued by the Board of Commissioners of the City of Jersey City to Metropolitan Liquor Corp., t/a Bettinger's, for premises 50 Journal Square, Jersey City, be and the same is hereby suspended for five (5) days, commencing at 2:00 A.M. on February 22, 1943, and terminating at 2:00 A.M. on February 27, 1943.

ALFRED E. DRISCOLL
Commissioner.

6. DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - GOOD CONDUCT FOR FIVE YEARS LAST PAST AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

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. 253
-----)

BY THE COMMISSIONER:

The petitioner herein was arrested on two separate occasions, charged with possession and sale of illicit alcoholic beverages in violation of the Alcoholic Beverage Control Act. Both violations occurred within a few months of each other, viz., March and May, respectively, in the year 1935. Thereafter, on July 27, 1937, she was fined for having lottery slips in her possession in violation of the local ordinance.

As to the Control Act violations, she was fined \$100.00 for the first offense and the sentence was suspended on the second occasion. Petitioner attempted to explain that she shielded her mother, who was the real offender, by pleading guilty to the second charge. However, in view of her plea of guilty in the criminal court, the question of guilt or innocence cannot be redetermined here.

There may be some question as to whether any of the crimes considered herein involved moral turpitude. See Re Case No. 400, Bulletin 491, Item 2, concerning a single violation of the Control Act and Re Case No. 392, Bulletin 479, Item 11, concerning possession of lottery slips. However, I deem it unnecessary to decide that question herein because petitioner now seeks to have lifted any statutory disqualification resulting from said convictions.

Bearing in mind the fact that the violations of the Alcoholic Beverage Control Act happened over seven years ago and that during the past five years the petitioner has apparently mended her ways, as evidenced by the testimony of the clergyman, lawyer and co-worker who appeared as character witnesses in her behalf, I do not believe that the interest of the public would be adversely affected due to her association with the alcoholic beverage industry.

Accordingly, it is, on this 4th day of February, 1943,

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.

7. AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - SALE OF ALCOHOLIC BEVERAGES TO MINORS - LICENSEE PAID FINE OF \$200.00 - IN DISCIPLINARY PROCEEDINGS LICENSE WAS SUSPENDED FOR 50 DAYS - PETITION TO LIFT GRANTED.

In the Matter of a Petition by)
MONMOUTH OLD MILL, INC.)
Old Mill Road)
Spring Lake Heights)
P. O. Box 104)
Spring Lake, N. J.,)

CONCLUSIONS
AND ORDER

to lift the automatic suspension)
of Plenary Retail Consumption)
License C-8, issued by the Borough)
Council of the Borough of Spring)
Lake Heights.)
-----)

Haydn Proctor, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

On January 11, 1943 William Brauweiler, President and majority stockholder of Monmouth Old Mill, Inc., holder of License C-8 issued to it by the Borough Council of the Borough of Spring Lake Heights, was found guilty in the Monmouth County Court of Quarter Sessions of aiding and abetting in the sale of alcoholic beverages to minors, and was sentenced, on January 21, 1943, to a fine of \$200.00 and costs, which has been paid. As a result of this conviction, the corporate license became automatically suspended (see R. S. 33:1-31.1) and, accordingly, the license was picked up by agents of this Department on January 23, 1943.

Disciplinary proceedings based upon the same episode leading to the aforesaid conviction were instituted against the licensee and a suspension of fifty days imposed therein. Re Monmouth Old Mill, Inc., Bulletin 548, Item 8. However, because it appeared that the licensed premises, located in a seashore community, were then closed, the effective date of the suspension was postponed to April 1, 1943.

The licensee has submitted a petition requesting that the automatic suspension resulting from the conviction of its President and majority stockholder be lifted. This request is hereby granted. The suspension of fifty days imposed in the disciplinary proceedings was therein determined to be a full and adequate punishment for the violation. This penalty inflicted in the disciplinary proceedings, of course, still subsists and remains in effect.

Accordingly, it is, on this 9th day of February, 1943,

ORDERED, that the automatic suspension, pursuant to R. S. 33:1-31.1, of Plenary Retail Consumption License C-8, issued to Monmouth Old Mill, Inc. by the Borough Council of the Borough of Spring Lake Heights, for premises Old Mill Road, Spring Lake Heights, be and the same is hereby lifted, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES ON ELECTION DAY, IN VIOLATION OF RULE 2 OF STATE REGULATIONS NO. 20 - HINDERING INVESTIGATION, IN VIOLATION OF R. S. 33:1-35 - 20 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against MICHAEL MILLO 138 Midland Avenue Garfield, N. J., Holder of Plenary Retail Consumption License C-23 issued by the City Council of the City of Garfield.

CONCLUSIONS AND ORDER

Chandless, Weller & Kramer, Esqs., by Julius E. Kramer, Esq., Attorneys for Defendant-Licensee. William F. Wood, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee pleaded not guilty to charges alleging that on Primary Election Day, September 15, 1942, he (1) sold and delivered alcoholic beverages to consumers while the polls were open for voting, in violation of Rule 2 of State Regulations No. 20, and (2) hindered, delayed and failed to facilitate an investigation of his licensed premises, in violation of R. S. 33:1-35.

On the day in question, at about 5:50 P.M., Investigator Webster, accompanied by Detective Pyott of the Garfield Police Department, passed the defendant's tavern in an automobile. Observing some activity at the premises, they parked the car and approached the tavern from across the street. As they neared the premises they noticed, through the show window, three men sitting at the bar. When they arrived at the front entrance, these three men left their places at the bar and hurried out through the rear door. Investigator Webster then shouted to the bartender, "I am an ABC investigator; let me in." At the same time, the bartender removed three glasses from the bar, dumped the unconsumed contents into a sink under the bar and washed the glasses. In the meantime, the detective had rushed to the rear door to apprehend the three men but, when he got there, they had already disappeared. One man, later identified as John Pekarr, employed as a part-time porter by the licensee, was in the rear yard. When questioned by the detective as to what he was doing there, the porter replied that he was "going to work."

The bartender, after a lapse of about a minute, finally opened the front door and allowed the investigator and detective to enter. The investigator then asked the bartender, who is the licensee's son, about the sale of the beer to the three men, and the detective inquired of him who the three men were. The bartender stood mute and did not answer either question.

At the hearing, both the bartender and the porter denied that anyone other than themselves were on the premises at the time. The bartender also denied that he had removed any glasses from the bar. However, I am convinced from the testimony of both the investigator and the detective that these glasses were on the bar when they arrived at the premises. I also believe that these glasses contained beer. The investigator described their contents as "an amber color beverage...with a frothy head", and gave, as his opinion, that the glasses had been filled with beer.

Moreover, the bartender admitted that both he and the porter had each consumed three glasses of beer on that day. This constitutes a violation of Rule 2 of State Regulations No. 20, which provides that "No licensee shall sell....or deliver to any consumer, any alcoholic beverages....while the polls are open for voting...." One of the definitions of a sale under the Alcoholic Beverage Law is "...the gratuitous delivery or gift of any alcoholic beverage by any licensee." R. S. 33:1-1(w). The fact that the beer was drawn and consumed by employees of the licensee makes the act no less a violation than if the beer was actually served to a cash customer. Cf. Reeves v. Newark, Bulletin 547, Item 5. The intent of the cited rule is to prohibit the consumption of alcoholic beverages on licensed premises by any person during voting hours on any general, municipal, primary or special election day.

I find the licensee guilty of both charges. Considering all of the attendant circumstances, I shall suspend the license for a period of twenty days.

Accordingly, it is, on this 15th day of February, 1943,

ORDERED, that Plenary Retail Consumption License C-23, issued by the City Council of the City of Garfield to Michael Millo for premises 138 Midland Avenue, Garfield, be and the same is hereby suspended for a period of twenty (20) days, commencing at 4:00 A.M. on February 22, 1943 and terminating at 5:00 A.M. on March 14, 1943.

ALFRED E. DRISCOLL
Commissioner.

9. AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - SALE OF ALCOHOLIC BEVERAGES TO MINOR - LICENSEE PAID FINE OF \$50.00 - IN DISCIPLINARY PROCEEDINGS LICENSE WAS SUSPENDED FOR 6 DAYS - PETITION TO LIFT GRANTED.

In the Matter of Petition by)
 CLUB LINCOLN, INC.)
 677 Mt. Prospect Ave.)
 Newark, N. J.,)
 to lift the automatic suspension)
 of Plenary Retail Consumption)
 License C-949 issued by the Muni-)
 cipal Board of Alcoholic Beverage)
 Control of the City of Newark.)
 -----)

O R D E R

Anthony A. Calandra, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

On February 5, 1943 an officer and director of Club Lincoln, Inc. pleaded guilty in a criminal court to a charge of selling alcoholic beverages to a minor and was fined the sum of \$50.00.

On the same date the license of Club Lincoln, Inc. was picked up by investigators of the Department of Alcoholic Beverage Control because said conviction automatically suspended the license for the balance of its term. R. S. 33:1-31.1. Petitioner now prays that the automatic suspension may be lifted in accordance with the provisions of said Section.

The case concerns the sale of a glass of beer to a minor who was then nearly eighteen years of age but who allegedly represented

to the person making the sale that he was twenty-one years of age. No aggravating circumstances appear.

Disciplinary proceedings were duly instituted against petitioner by the Municipal Board of Alcoholic Beverage Control of the City of Newark because of the violation mentioned herein. Club Lincoln, Inc., by its duly authorized representative, today pleaded guilty to said charge. The local Board thereupon suspended its license for six days, namely, from February 5, 1943, at 3:00 A.M., to February 11, 1943, at 3:00 A.M. Considering all the facts, I conclude that the licensee has been sufficiently punished, and hence shall lift the automatic suspension of its license.

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

ORDERED, that the automatic suspension of Plenary Retail Consumption License C-949, issued to Club Lincoln, Inc. by the Municipal Board of Alcoholic Beverage Control of the City of Newark for premises 677 Mt. Prospect Avenue, Newark, be and the same is hereby lifted, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

10. DISCIPLINARY PROCEEDINGS - CHARGE OF SELLING ALCOHOLIC BEVERAGES TO MINOR NOLLE PROSSED - PERMITTING PROSTITUTES ON LICENSED PREMISES - LICENSE SUSPENDED FOR BALANCE OF TERM.

In the Matter of Disciplinary Proceedings against
ALMAC TAVERN (a corporation),
5 Railroad Plaza
New Brunswick, N. J.,
Holder of Plenary Retail Consumption License C-58, issued by the Board of Commissioners of the City of New Brunswick.

CONCLUSIONS
AND ORDER

Alex Eber, Esq., Attorney for Defendant-Licensee.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges served upon the licensee alleged that:

"1. On January 8th, 1943, and on divers days for a period of approximately a month and a half prior thereto, you sold alcoholic beverages to Private William P. -----, a minor, in violation of R. S. 33:1-77.

"2. On January 8th, 1943, and on divers days for a period of approximately a month and a half prior thereto, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to Private William P. -----, a person under the age of twenty-one (21), and allowed, permitted and suffered the consumption of alcoholic beverages by such person upon the licensed premises, in violation of Rule 1 of State Regulations No. 20.

"3. On December 29th, 1942, January 3rd, 1943, and January 4th, 1943, and on divers days from August 1942, you

allowed, permitted and suffered in and upon the licensed premises known prostitutes and other persons of ill-repute, in violation of Rule 4 of State Regulations No. 20."

(3). Defendant-licensee has entered a plea of non vult to charge

On motion of the attorney for the Department, charges (1) and (2) have been nolle prossed. I am advised by the attorney that the exigencies of war have resulted in his inability to produce evidence sufficient to establish the age of the minor named in charges (1) and (2).

With respect to the third charge: After having carefully considered the plea of counsel for the defendant and studied the reports of the ABC agents whose investigation resulted in the instant case, I have reached the conclusion that defendant's license should be suspended for the balance of its term.

The defendant's tavern had acquired a reputation with soldiers at nearby Camp Kilmer as a likely place to "pick up" women. The "pick ups" that occurred on the premises were, in a number of instances, followed by illicit sexual relations off the premises. On one or more instances the defendant's bartender introduced a soldier to one of these women, with whom, shortly thereafter, the soldier had intercourse in a nearby hotel. This woman, and at least one other, with whom a soldier had illicit relations following a "pick up" on the licensed premises, exacted payment from the soldiers. The defendant's servants and agents knew, or should have known, what was going on in the premises. I am satisfied from the facts before me that prostitutes were permitted on the licensed premises with the knowledge and approval of defendant's employees.

While nothing in the record discloses that improper sexual acts occurred on the licensed premises, or that the defendant or its employees benefited directly from the activities of these women, the whole picture that emerges from the background of this case is completely revolting. The defendant's plea that many of the women that frequented its premises were beyond reproach and that it was difficult for its servants to distinguish between the former and those who visited the premises for improper purposes, while understandable, does not move me in the face of the bartender's knowledge and his failure to take immediate steps to clean up the place.

Notwithstanding the alleged lack of personal knowledge on the part of the officers of the licensee corporation, it is nevertheless responsible for the acts of its employees. Re Kneller, Bulletin 49, Item 4; Stein v. Passaic, Bulletin 451, Item 5. A corporation can only act through its agents, officers or employees.

The violation upon which charge (3) is based is an extremely serious one. Prostitutes are not to be tolerated on licensed premises. The involvement of members of the armed forces of this country constitutes further aggravating circumstances. In addition, the defendant has a previous record, its license having been suspended by the Board of Commissioners of the City of New Brunswick on January 12, 1943 for six days on its plea of guilty to charges alleging that it permitted a lottery to be conducted on the licensed premises.

The penalty inflicted in this case is limited to the facts herein. Little credit can be given to the licensee for its plea of

guilty in advance of the date set for hearing. In cases of this kind the State is not interested in saving the time and expense of conducting a trial, but rather in cleaning up the mess whatever the cost.

Accordingly, it is, on this 15th day of February, 1943,

ORDERED, that Plenary Retail Consumption License C-58, issued by the Board of Commissioners of the City of New Brunswick to Almac Tavern for premises 5 Railroad Plaza, New Brunswick, be and the same is hereby suspended for the balance of its term, effective immediately.

Alfred E. Driscoll
Commissioner.

HECKED BY No. 5