

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

BULLETIN 422

SEPTEMBER 12, 1940.

1. DISCRIMINATORY PRICES AND DISCOUNTS - INTRODUCTORY STATEMENT.

The liquor industry has suffered from restlessness and economic hardships caused by favoritism in the granting of discounts, rebates, allowances, free goods and other inducements by manufacturers and wholesalers to their retail customers. The most important step in the field of alcoholic beverage control in New Jersey since the retail fair trade law of two and a half years ago was the enactment of Assembly Bill No. 216 into law. This became Chapter 87, P.L. 1939, effective immediately, when Governor Moore approved it on June 12, 1939.

Attempts made by this Department to enforce this law have proved futile in the absence of the definitive rules specifically authorized to "fulfil the restrictions embodied in this Act". Evidence has been accumulated in an effort to point the way to the fair, just and reasonable method of eliminating discriminatory discounts and deals without completely choking normal free enterprise. To seek to remedy one injustice with another brings forth no good fruit.

Proposed regulations were made available on October 21, 1939 and a public hearing was held on November 1, so that the whole matter might be subjected to thorough discussion. Some important differences of opinion were disclosed at the hearing and these have been helpful in considering the form of the new regulations. In recent weeks, interest in the proposed regulations has actively revived. A stream of letters from persons in all branches of the industry has come in. Representatives of manufacturers, wholesalers and retailers have come in person, as well as solicitors and other interested parties.

The time thus spent has been, I hope, well-invested. With the reasons for the tardiness in this promulgation, my experience of the past weeks have bred in me a deep and understanding sympathy.

Promulgation of Regulations No. 34 will raise a great number of questions. Why was this done and why not that!

We should stultify ourselves were we to try to convey the impression that we have anticipated every need and every conceivable method of avoidance which may occur to the deliberate cheater. These rules are, at the best, an experiment. Sincere effort has been given to make them reasonable and workable. They will exert themselves upon, and be affected by, a multitude of influential economic and psychologic factors. After experience in operation shows the way, they will very likely have to be amended.

The statute requires us to make the retailer responsible along with the manufacturer or wholesaler when a violation is established. Enforcement experience teaches us that this provision will exclude us from our best source of evidence. We may have to request statutory amendment to open this avenue to proof.

No credit rule is included. The supplement does not specifically mention credit. Nor does it employ language which causes us to believe that credit regulation was within the intent of the

statute. It directs itself to discriminatory prices and discounts, rebates, free goods, allowances or other inducements.

Regulation of credit is a radical step. Its influence would be widespread and unpredictable. It would require additional trained man-power to make itself felt. This Department is now short of needed help. Regulations No. 34 as now issued will draw further upon the time and energies of the present staff. If credit regulation is desired, the legislature should supply the added trained personnel.

Write us your questions. Do not telephone. We will give you prompt service.

REGULATIONS NO. 34 - RULES GOVERNING WHOLESALE PRICES AND MAXIMUM DISCOUNTS, REBATES, FREE GOODS, ALLOWANCES AND OTHER INDUCEMENTS TO RETAILERS.

1. Manufacturers and wholesalers engaged in the sale to retailers of alcoholic beverages other than malt beverages shall file at the offices of the State Department of Alcoholic Beverage Control, on or before September 24, 1940, (a) a complete price list, duly authenticated, of all such alcoholic beverages which shall contain, with respect to each item, the exact brand or trade name, capacity of package, nature of contents, age and proof where stated on label, and the wholesale bottle and standard case prices, which prices shall be individual for each item and not in "combination" with any other item; (b) a statement of discounts, duly authenticated, allowed for quantity purchases within the permissible limits set forth in Rules 5 and 6 hereof; and (c) an affidavit establishing that true copies of the price list and discount statement have been served personally or by mail upon all of its retail customers.

2. Such price lists and discount statements shall become effective on October 1, 1940 and remain in force and be maintained until a statement of changes is filed and becomes effective in accordance herewith. Changes in price list or discount statement may be made by filing at the offices of the State Department of Alcoholic Beverage Control, a statement thereof, which shall take effect on a date specified therein, which shall not be less than fifteen (15) days from the date of filing thereof, together with an affidavit establishing that a true copy of the statement of changes has been served personally or by mail upon all of its retail customers, provided, however, that the State Commissioner may in an emergency suspend the operation of the fifteen (15) day clause herein.

3. Such price lists and discount statements, or changes therein, shall be open to public inspection. Notice of filing thereof shall be published in the official bulletins issued by the State Department of Alcoholic Beverage Control.

4. No manufacturer or wholesaler shall, on or after October 1, 1940, sell a retailer any alcoholic beverages other than malt beverages except at the wholesale price, less permissible discount, according to the terms specified in Rules 5 and 6 hereof, then in force; all other discounts, rebates, allowances and inducements, including "free goods", "deals", "combination sales", and similar transactions, are prohibited except as provided in Rule 8.

5. No manufacturer or wholesaler may grant a discount to a retailer on a sale of alcoholic beverages other than malt beverages or wines, except pursuant to the following terms and conditions:

- (a) No discount may be allowed on a single purchase up to, but not including, one hundred dollars (\$100.00) unless full cash payment be made on a single, complete delivery of the entire purchase order, in which event a single discount of not more than two per cent (2%) of the total purchase price may be allowed.
- (b) No discount may be allowed on a single purchase in a total amount between one hundred dollars (\$100.00) and five hundred dollars (\$500.00) unless full cash payment be made within thirty (30) days from the date of the single complete delivery of the entire purchase order, in which event a single discount of not more than three per cent (3%) of the total purchase price may be allowed.
- (c) No discount may be allowed on a single purchase in the total amount of five hundred dollars (\$500.00) or over, unless full cash payment be made within thirty (30) days from the date of the single complete delivery of the entire purchase order, in which event a single discount of not more than five per cent (5%) of the total purchase price may be allowed.

For the purpose of this rule, the acceptance of any note or post-dated check shall not be construed as full cash payment.

A record of each discount allowed by a manufacturer or wholesaler to a retail customer shall be clearly, fully and immediately entered in writing by said manufacturer or wholesaler on the invoice of said retailer, which invoice shall be kept on the licensed premises of said retailer and shall be available at all reasonable times for a period of one year from the date of the invoice for inspection by duly accredited representatives of this Department.

A retailer shall make no returns of alcoholic beverages or other things of value to a manufacturer or wholesaler and said manufacturer or wholesaler shall not accept such returns when designed and effected to avoid the uniform application of the discount schedules herein.

6. No manufacturer or wholesaler may grant a discount to a retailer on a sale of wines unless full cash payment be made within thirty (30) days of the date of the single complete delivery of the entire purchase order, in which event a single discount not exceeding two per cent (2%) of the total purchase price may be allowed.

A retailer shall make no returns of alcoholic beverages or other things of value to a manufacturer or wholesaler and said manufacturer or wholesaler shall not accept such returns when designed and effected to avoid the uniform application of the discount schedule herein.

7. Each manufacturer or wholesaler engaged in the sale to retailers of alcoholic beverages other than malt beverages shall prepare and execute not later than the tenth of each month, and covering the previous calendar month, a complete itemized affidavit of all salaries, commissions, expenses, allowances, gifts, and all other things of value allowed or given by the licensee to each of its stockholders, officers, directors, solicitors, missionary men, or other employees or representatives of the licensee who contact directly or indirectly the retailers to whom the licensee sells alcoholic beverages other than malt alcoholic beverages. Such affidavit shall be kept on the licensed premises and shall be available at all reasonable times for a period of one year from the date of the affidavit for inspection by duly accredited representatives of this Department.

8. A manufacturer or wholesaler may furnish or give to a retailer, who has not previously purchased the particular product, not more than one pint of any brand of any type of alcoholic beverages, or if the brand is not packaged in containers of less than one quart, not more than one quart of such brand of such type of alcoholic beverage; provided, however, that any alcoholic beverage furnished as a sample shall have printed or stamped in ink on its brand label, the words "SAMPLE - NOT FOR SALE" in letters not less than one-half inch high and of proportionate width. Nothing hereinabove contained shall apply to malt alcoholic beverages.

9. No manufacturer or wholesaler shall allow, permit or suffer the delivery of alcoholic beverages other than malt beverages to any retailer, unless said retailer at or prior to said delivery has been served personally, or by mail, with the price list and discount statement of said manufacturer or wholesaler existing and effective at the time of the sale.

10. Violation of any of the foregoing rules by any manufacturer, wholesaler or retailer, directly or indirectly, shall constitute ground for suspension or revocation of license.

The foregoing rules are hereby promulgated, effective October 1, 1940.

E. W. GARRETT,  
Acting Commissioner.

Dated: September 5, 1940.

2. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application to	)	
Remove Disqualification because of	)	
a Conviction, pursuant to R.S.35:1-31.2	)	CONCLUSIONS
(as amended by Chapter 350, P.L. 1938).	)	AND ORDER
Case No. 111	)	
-----	)	

On November 14, 1930 petitioner was convicted of breaking, entering and larceny, placed on probation for two years and fined \$50.00. He has never been arrested or convicted at any other time except that in April 1940 he was arrested on complaint of his wife for failing to provide for a minor child. In the latter proceeding he was ordered to pay \$3.00 per week for the support of the child.

At the hearing herein, petitioner testified that there is a divorce action pending between himself and his wife; that they have been separated for many years; that for some time after the separation he contributed to the support of his wife and child but that he discontinued such support because of alleged misconduct by his wife; that after his arrest in April 1940 he consented to pay \$3.00 per week for the support of his child and that he is making such payments through the probation officer. Under these circumstances I conclude that the court proceedings in April 1940 should not bar petitioner from relief and find as a fact that he has been law-abiding since his conviction in 1930.

On behalf of petitioner, three character witnesses, all of whom have known petitioner for at least fourteen years, testified that his reputation is good and that he has been leading an honest and law-abiding life during the past ten years.

The Chief of Police in the municipality wherein petitioner resides has certified that there are no pending complaints or investigations against him.

It is concluded that petitioner has been law-abiding for at least five years last past and that his association with the alcoholic beverage industry will not be contrary to public interest.

It is, on this 4th day of September, 1940,

ORDERED, that his statutory disqualification because of the conviction described herein be and the same is hereby lifted in accordance with the provisions of R. S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938).

E. W. GARRETT,  
Acting Commissioner.

3. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES - 5 DAYS ON GUILTY PLEA.

In the Matter of Disciplinary Proceedings against )

JEROME KALINE, )  
T/a Sportmen's Rendevous, )  
149 Schuyler Avenue, )  
Kearny, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-6 issued by the )  
Town Council of the Town of )  
Kearny. )  
----- )

Richard E. Silberman, Esq., Attorney for the Department of )  
Alcoholic Beverage Control. )  
Jerome Kaline, Pro Se. )

The licensee has pleaded guilty to a charge of selling a pint bottle of Wilson "That's All" Blended Whiskey below the minimum consumer price published in Bulletin 416, in violation of Rule 6 of State Regulations 30.

By entering this plea in ample time before the date set for hearing, the Department has been saved the time and expense of proving its case. The license will be suspended for a period of five (5) days instead of ten (10) days.

Accordingly, it is, on this 4th day of September, 1940,

ORDERED, that Plenary Retail Consumption License C-6, heretofore issued to Jerome Kaline by the Town Council of the Town of Kearny, be and the same is hereby suspended for a period of five (5) days, effective September 9, 1940, at 2:00 A.M. (Daylight Saving Time).

E. W. GARRETT,  
Acting Commissioner.

4. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES - 5 DAYS ON GUILTY PLEA.

In the Matter of Disciplinary Proceedings against  
TEOFIL WANCEVICH,  
123 Schuyler Avenue,  
Kearny, N. J.,  
Holder of Plenary Retail Consumption License C-23 issued by the Town Council of the Town of Kearny.

CONCLUSIONS  
AND ORDER

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

The licensee has pleaded guilty to a charge of selling a pint bottle of Wilson "That's All" Blended Whiskey below the minimum consumer price published in Bulletin 416, in violation of Rule 6 of State Regulations 30.

By entering this plea in ample time before the date set for hearing, the Department has been saved the time and expense of proving its case. The license will be suspended for a period of five (5) days instead of ten (10) days.

Accordingly, it is, on this 4th day of September, 1940,

ORDERED, that Plenary Retail Consumption License C-23, heretofore issued to Teofil Wancevich by the Town Council of the Town of Kearny, be and the same is hereby suspended for a period of five (5) days, effective September 9, 1940, at 2:00 A.M. (Daylight Saving Time).

E. W. GARRETT,  
Acting Commissioner.

5. ENFORCEMENT DIVISION ACTIVITY REPORT FOR AUGUST, 1940

To: E. W. Garrett, Acting Commissioner

ARRESTS: Total number of persons - - - - - 37  
 Licensees - 2 Non-licensees - 35

SEIZURES: Stills - total number seized- - - - - 7  
 Capacity 1 to 50 Gallons - - - - - 5  
 Capacity 50 Gallons and over - - - - - 2

Motor Vehicles - Total number seized- - - - - 7  
 Trucks - 1 Passenger cars - - - - 6

Alcohol  
 Beverage Alcohol - - - - - 259 Gallons

Mash - total number of gallons- - - - - 1715

Alcoholic Beverages  
 Beer, Ale, etc.- - - - - 603 Gallons  
 Wine - - - - - 31 "  
 Whiskies and other hard liquor - - - - - 131 "

RETAIL INSPECTIONS:

Licensed premises inspected - - - - - 1891  
 Illicit (bootleg) liquor - - - - - 13  
 Gambling violations- - - - - 8  
 Sign violations- - - - - 32  
 Unqualified employees- - - - - 287  
 Other mercantile business- - - - - 10  
 Disposal permits necessary - - - - - 16  
 "Front" violations - - - - - 6  
 Improper beer markers- - - - - 0  
 Other violations found - - - - - 7

Total violations found - - - - - 379  
 Total number of bottles gauged- - - - - 19258

STATE LICENSEES:

Plant Control inspections completed - - - - - 144  
 License applications investigated - - - - - 13

COMPLAINTS:

Investigated and closed - - - - - 274  
 Investigated, pending completion- - - - - 227

LABORATORY:

Analyses made - - - - - 167  
 Alcohol and water and artificial coloring cases- - - - - 23  
 Poison and denaturant cases - - - - - 0

Respectfully submitted,

R. E. Silberman,  
 Attorney.

6. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEE - SALES MADE AND PREMISES OPEN DURING PROHIBITED HOURS - SALES BY WIFE OF LICENSEE DURING PROHIBITED HOURS - 10 DAYS ON PLEA OF GUILT.

In the Matter of Disciplinary Proceedings against  
 BOLESLAU KIJEK,  
 243 Waverly Avenue,  
 Newark, N. J.,  
 Holder of Plenary Retail Consumption License C-408, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.  
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CONCLUSIONS AND ORDER

Richard E. Silberman, Esq., Attorney for State Department of Alcoholic Beverage Control.  
 Boleslau Kijek, Pro Se.

The licensee has pleaded guilty to the following charges:

"1. At or about 9:35 A.M. (DST) on Sunday, August 11, 1940, you sold and served alcoholic beverages in violation of Section 1 of Ordinance 3930 adopted by the Board of Commissioners of the City of Newark on December 21, 1938, which ordinance prohibits the sale of alcoholic beverages on Sundays between the hours of 3:00 A.M. and 12:00 o'clock noon.

"2. On or about the date and at the hour aforesaid your licensed premises, where the principal business is the sale of alcoholic beverages, were open in violation of the aforesaid ordinance.

"3. On or about the date and at the hour aforesaid you allowed and employed your wife to sell and serve alcoholic beverages to patrons on your licensed premises, where the principal business is the sale of alcoholic beverages, in violation of Section (a) of Newark Resolution 4889 adopted by the Board of Commissioners on May 24, 1939, which resolution prohibits the employment of any female as a waitress except the wife of the licensee, and then only from 7:00 A.M. to 6:00 P.M. on weekdays, and from noon to 6:00 P.M. on Sundays."

The usual penalty for each violation is five days, making a total of fifteen days.

By entering this plea in ample time before the date fixed for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for ten days instead of fifteen days.

Accordingly, it is, on this 4th day of September, 1940,

ORDERED, that Plenary Retail Consumption License C-408, heretofore issued to Boleslau Kijek by the Municipal Board of

Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of ten (10) days, effective September 9, 1940, at 3:00 A.M. (Daylight Saving Time).

E. W. GARRETT,  
Acting Commissioner.

7. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED -  
CONCLUSIONS.

September 5, 1940

Re: Case No. 341

In his application for solicitor's permit, applicant denied that he had ever been convicted of a crime. Investigation by this Department, however, disclosed that in 1926 applicant, then only sixteen years old, pleaded non vult to a charge of entering and had been sentenced to pay a fine of 50¢ a week and to probation for three years. It appears that applicant had been implicated, together with several other young men who resided in the same neighborhood, in the pilfering of a small quantity of pipe and copper from a warehouse belonging to applicant's employer.

In view of applicant's record, which is otherwise clear, and in view of his youth at the time the crime was committed, I believe that it should be determined that moral turpitude was not involved in the crime of which he stands convicted. See Re Case No. 36, Bulletin 149, Item 1.

As regards his false affidavit, applicant testified at the hearing that he was unaware of the fact that he had been convicted; that "the way the Judge explained it to me it was just teaching me a lesson"; that it was his thought that conviction necessarily entailed being sentenced to jail.

The fact remains that the affidavit was false. The record shows, moreover, that he entered a plea of non vult to the charge and was placed on probation and required to pay a weekly fine for several years.

It is recommended, therefore, that applicant be declared eligible to hold a solicitor's permit, but that issuance of said permit be withheld for a further period of ten days because of the false affidavit.

Robert R. Hendricks,  
Attorney.

APPROVED:  
E. W. GARRETT,  
Acting Commissioner.

8. DISCIPLINARY PROCEEDINGS - 30 DAYS' SUSPENSION REDUCED TO 10 DAYS IN VIEW OF PENALTIES IMPOSED IN SIMILAR CASES - DISCUSSION OF PENALTIES TO BE IMPOSED IN "FRONT" CASES.

In the Matter of Disciplinary Proceedings against	)	
	)	
SILVER PALM CORPORATION, T/a "Silver Palm", 1201-5 Kingsley Street, Asbury Park, N. J.,	)	On Petition of Defendant for Reconsideration of Penalty.
	)	
Holder of Plenary Retail Consumption License No. C-50 for the licensing year expiring June 30, 1940, and now holder of Plenary Retail Consumption License No. C-50 for the current (1940-41) licensing year, issued by the Board of Commissioners of the City of Asbury Park.	)	CONCLUSIONS AND ORDER
	)	
-----	)	

Kasen, Schnitzer & Kasen, Esqs., Attorneys for the Defendant-Petitioner.

On July 12, 1940 I adjudged the defendant, a corporation, guilty of having falsely stated in its application for its 1939-40 plenary retail consumption license that Miss Ervel A. Powers, holder of more than 10% of its stock at time of such application, was a five-year resident in New Jersey when in fact she was not.

Since the Alcoholic Beverage Law provides that no corporation (other than a hotel) may obtain a retail liquor license in New Jersey unless, among other things, all holders of more than 10% of its stock are five-year residents of the State, the gravamen of the case against the defendant thus lay in the fact that the defendant was, by reason of Miss Powers' lack of such residence, actually disqualified from obtaining its 1939-40 license and had, by its misrepresentation as to such residence, falsely caused itself to appear qualified. See R. S. 33:1-12.1, 25.

Because of such fact, I imposed the heavy penalty of a thirty-day suspension upon the defendant's current license despite its frank admission of guilt and its proof that it had actually corrected its disqualification by Miss Powers' bona fide transfer of all but 8% of her stock. Re Silver Palm, Bulletin 417, Item 8.

After five days of such suspension were served, the remaining twenty-five days were postponed until Monday, September 9, 1940, for the reasons appearing in Re Silver Palm, Bulletin 417, Item 10.

The defendant now petitions for reduction of its penalty, asserting that such penalty was, in the first instance, unduly severe.

Such petition thus calls up for review the question of fit penalty for violations of the instant character where an applicant, disqualified from license by reason of the five-year residence requirement, falsely represents that it actually complies

with such requirement and thereupon obtains its license.

In view that control of the liquor traffic in this State is based on the licensing system, it is plainly apparent that such violations, since tending to nullify the effectiveness of that system, are not merely technical but warrant substantial penalty even where, as here, the licensee frankly admits guilt and has fully corrected the situation.

Hence, when originally considering penalty in the instant case, I deemed a thirty-day suspension (which beyond dispute is "substantial") to be the fit penalty.

However, on reconsideration, I am, in fairness, much swayed by the fact that the five-year residence requirement, while mandatory, is not, however, a qualification actually going to fitness of character; that, hence, although the defendant obtained a license when actually disqualified by reason of that requirement, such did not result in necessarily unfit persons engaging in the liquor business in this State; that, while the licensee is to be punished "till it hurts", nevertheless, where, as here, it manfully admitted its guilt and fully corrected the situation, ten days appears to be adequate penalty.

In support of such conclusion are Re Casagrande, Bulletin 396, Item 11 and Re Ceravolo, Bulletin 420, Item 6, which, although perhaps factually different from the present type of case, are nevertheless closely, if not wholly, in point. In those cases, where a licensee who was a "front" for a person disqualified by reason of not being a five-year resident in New Jersey frankly admitted its guilt and actually corrected the situation, I imposed a suspension of ten days. Cf. Re Whitman, Bulletin 410, Item 4; Re Monroe, Bulletin 415, Item 12. Also cf. Re King, Bulletin 404, Item 5; Re Club Parsippany, Bulletin 411, Item 8.

Hence, in view of the foregoing, I believe that, in full fairness, the defendant is entitled to a reduction of its suspension to ten days. However, I see no reason for further reduction to five days as requested by the defendant.

In thus reducing the suspension to ten days, I must, for clarification, point out:

(1) That in violations of the instant kind, involving the five-year residence requirement, where the licensee has made frank disclosure and fully corrected the situation and no aggravating circumstances appear, ten days' suspension of license will remain the penalty until and unless experience proves that such penalty should be otherwise;

(2) That there is not to be ten-day (but, to the contrary, more substantial) penalty in those cases where full and frank disclosure is not immediately made and the illegal set-up wholly corrected or in those cases where the licensee misrepresents facts as to his disqualifying criminal record (or is a "front" for a person with such a record).

Accordingly, it is, on this 6th day of September, 1940,

ORDERED, that the thirty-day suspension heretofore imposed upon the plenary retail consumption license of Silver Palm Corporation, T/a "Silver Palm", for 1201-5 Kingsley Street, Asbury Park, be and is hereby reduced to ten days; and it is further

ORDERED, that, since such licensee has already served five (5) days of the suspension, it shall serve the remaining five (5) days commencing 5:00 A.M. (Daylight Saving Time) Monday, September 9, 1940.

E. W. GARRETT,  
Acting Commissioner.

9. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

September 9, 1940

Re: Case No. 327

On June 14, 1937 applicant pleaded non vult to a charge of embezzlement in a county court and was placed on probation for five years and ordered to pay fifty cents per week.

At the hearing herein applicant testified that the money he is alleged to have embezzled was part of a substantial sum of money turned over to him in 1936 by his brother, now deceased; that after his brother's death he was called upon to account for said money in a proceeding instituted in the Orphans' Court, where it was established that applicant was indebted to his brother's estate for part of the money so entrusted to him. When applicant failed to pay the amount thus found to be due, he was arrested on a charge of embezzlement and subsequently pleaded non vult to said charge, as set forth above. Applicant contends that, in fact, he was not guilty of the crime of embezzlement because he had had his brother's permission to use, for his own purposes, the sum of money he is alleged to have embezzled.

In view of the proceedings in the Orphans' Court, and the plea in the criminal proceedings, question of his guilt or innocence cannot be redetermined herein. The question still remains, however, as to whether the crime, under the circumstances, involved moral turpitude.

Ordinarily, embezzlement does involve moral turpitude. However, there are circumstances in this case which lead to a different result. Considering the relationship between the parties involved, the light sentence imposed by the court, and the further fact that after his conviction applicant satisfied a civil judgment for the amount which he was alleged to have embezzled, I am of the opinion that the crime did not involve moral turpitude. Cf. Case No. 337, Bulletin 421, Item 5.

It may be of interest to note that, subsequent to the conviction referred to herein, a local issuing authority granted a retail license to applicant after examining the facts of the case. This action would seem to indicate that, in the opinion of the members of said issuing authority, the crime did not involve moral turpitude. I think that the determination so reached should be given some consideration herein, particularly in view that applicant has no other criminal record.

It is recommended, therefore, that applicant be advised that he is eligible to hold a liquor license or be employed by a liquor licensee.

APPROVED: Edward J. Dorton,  
E. W. Garrett, - September 10, 1940. Deputy Commissioner  
Acting Commissioner. and Counsel.

10. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEE - PREMISES OPEN AND SALES MADE DURING PROHIBITED HOURS - 5 DAYS' SUSPENSION ON PLEA OF GUILT.

In the Matter of Disciplinary Proceedings against )

JOSEPH ALBRECHT and MICHAEL L. OTT, )  
461 Bergen Street, )  
Newark, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-227, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. )  
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Robert R. Hendricks, Esq., Attorney for the Department of Alcoholic Beverage Control.  
Joseph Albrecht and Michael L. Ott, by Joseph Albrecht.

The licensees have pleaded guilty to charges that during prohibited hours on Sunday, August 11, 1940, their licensed premises at 461 Bergen Street, Newark, (1) were open, and (2) that sales of alcoholic beverages were made thereon, in violation of Section 1 of Ordinance No. 3930, adopted by the Board of Commissioners of the City of Newark on December 21, 1938.

The usual penalty for each violation is five days.

By entering this plea in ample time before the date fixed for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for five days instead of ten.

Accordingly, it is, on this 10th day of September, 1940,

ORDERED, that Plenary Retail Consumption License C-227, heretofore issued to Joseph Albrecht and Michael L. Ott by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for five (5) days, effective September 16, 1940, at 3:00 A.M. (Eastern Daylight Time).

E. W. GARRETT,  
Acting Commissioner.

11. FAIR TRADE - NOTICE OF NEXT PUBLICATION.

September 10, 1940.

The next official publication of minimum resale prices, pursuant to the fair trade rules (Regulations No. 30), will be made on or about Tuesday, October 1, 1940. New items and changes in old items must be filed at the offices of this Department not later than Tuesday, September 17, 1940.

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

E. W. GARRETT,  
Acting Commissioner.

12. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN APPLICATION THAT NAMED INDIVIDUAL WAS STOCKHOLDER AND DIRECTOR - EFFECT OF ENTRY OF GUILTY PLEA AFTER SEVERAL CONTESTED HEARINGS - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against  
SAVOY BAR & GRILL, INC.,  
1106 Springwood Avenue,  
Asbury Park, New Jersey,  
Holder of Plenary Retail Consumption License No. C-26 for the licensing year expiring June 30, 1940, and now holder of Plenary Retail Consumption License No. C-67 for the current (1940-1) licensing year, issued by the City Council of the City of Asbury Park.

CONCLUSIONS  
AND ORDER

Vincent Keuper, Esq. and Alvin Newman, Esq., Attorneys for Defendant-Licensee.  
Charles Basile, Esq., Attorney for Department of Alcoholic Beverage Control.

The defendant, a corporation, is charged with violating the Alcoholic Beverage Law by falsely representing in its application for its plenary retail consumption license for 1939-40 that one George M. Drumgoole was a stockholder and director in the corporation when in fact he was neither. R. S. 33:1-25.

After several contested hearings but before conclusion of the case, the defendant retracted its original plea of not guilty, confessed the charge against it, and admitted most, if not all, of the pertinent facts. Such facts appear to be:

During the 1938-9 licensing year, Drumgoole held a plenary retail consumption license for the premises in question as a "front" for Alice Townsend and Charles Hall, the former (Miss Townsend) being disqualified from holding such a license by reason of not then being a five-years' resident in New Jersey. R.S.33:1-25.

At the end of the 1938-9 term, these two actual proprietors of the business, on running into difficulties with Drumgoole, formed the defendant corporation, which took over the business and obtained a plenary retail consumption license therefor for 1939-40. In such incorporation eighteen shares of stock were allotted to Miss Townsend, five to Hall and two to Drumgoole (apparently to buy his peace), and all three of these persons were named as directors. Although Drumgoole never consented to this connection with the corporation, the defendant's application for its 1939-40 license nevertheless listed him as being such stockholder and director.

It should also be noted, as regards the defendant's application for, and obtaining of, its said 1939-40 license, that, since at such time Miss Townsend, holder of more than ten per cent of the stock in the corporation, was not yet a five-years' resident of the State, the defendant was (under R. S. 33:1-12.1, 25) actually disqualified from obtaining such license; and further that, presumably in order to appear qualified, it falsely stated in its application that Miss Townsend was then actually a five-years' resident.

However, the situation as regards the defendant's current (1940-41) license appears fully corrected. Miss Townsend, who still holds her eighteen shares of stock, became a five-years' resident of the State in the Fall of 1939. As regards Drumgoole, his purported shares of stock and appointment as director have been cancelled, and in his stead there is a new and apparently bona fide stockholder and director. Hall, who appears to have been qualified throughout, still holds his five shares of stock.

Now, although the specific charge against the defendant in this case is only as to its falsely stating, when applying for its 1939-40 license, that Drumgoole was a stockholder and director of the corporation, nevertheless, all the above recited facts, which show the entire background of the charged violation, are pertinent circumstances to be considered in determining proper penalty.

As to such penalty: In view that the situation is apparently now wholly corrected and that the defendant, albeit belatedly, pleaded guilty, its license will not be revoked. On the other hand, it is not to be given the benefit of a prompt and frank plea of guilt and admission of facts, since it entered such plea and made such admission only after several contested hearings. Cf. Re Silver Palm Corporation, Bulletin 422, Item 8. Hence, its license will be suspended for thirty days.

Although this proceeding was instituted during the last (1939-40) licensing term, it does not in anywise abate but remains fully effective against the defendant's renewal license for the current (1940-1) term. State Regulations No. 15; Re M.F. Tavern, Inc., Bulletin 407, Item 1; Re Silver Palm Corporation, Bulletin 417, Item 8.

Accordingly, it is, on this 11th day of September, 1940,

ORDERED, that plenary Retail Consumption License No. C-67 for the current (1940-41) licensing year, heretofore issued by the City Council of the City of Asbury Park to Savoy Bar & Grill, Inc. for 1106 Springwood Avenue, Asbury Park, be and is hereby suspended for a period of thirty (30) days, commencing at 5:00 A.M. (Day-light Saving Time) Monday, September 16, 1940.

E. W. GARRETT,  
Acting Commissioner.

