

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

BULLETIN 619

MAY 18, 1944.

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

BULLETIN 619

MAY 18, 1944.

1. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary )  
Proceedings against )

JOHN RAFFA )  
T/a JOHN'S TAVERN )  
774 Main Street )  
Hackensack, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-21, issued by the )  
City Council of the City of )  
Hackensack. )  
----- )

Herbert F. Myers, Jr., Esq., Attorney for Defendant-Licensee.  
Edward F. Hodges, Esq., appearing for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee pleaded non vult to a charge that, on March 9, 1944, he possessed a quart bottle of "Old Methusalem Brand A Blend of Straight Whiskies, 92 Proof", one 4/5 quart bottle of "Old Taylor Kentucky Straight Bourbon Whiskey, 100 Proof", and one 4/5 quart bottle of "Old Crow Brand Straight Rye Whiskey, 100 Proof", all of which contained alcoholic beverages which were not genuine as labeled, in violation of R. S. 33:1-50.

Three bottles of liquor, which upon test indicated a variance in proof from that shown on the labels, were seized by an investigator of the Department of Alcoholic Beverage Control at defendant's licensed premises on March 9, 1944. Subsequent analysis of the liquor made by the Departmental chemist disclosed that the contents of one bottle was over proof and that of two bottles under proof as compared with genuine samples of the respective brands.

The licensee has no previous adjudicated record. The minimum penalty of ten days' suspension of the license for a violation of this character will therefore be imposed.

Accordingly, it is, on this 8th day of May, 1944,

ORDERED, that Plenary Retail Consumption License C-21, heretofore issued by the City Council of the City of Hackensack to John Raffa, t/a John's Tavern, for premises 774 Main Street, Hackensack, be and the same is hereby suspended for ten (10) days, commencing at 3:00 A. M. May 15, 1944 and terminating at 3:00 A. M. May 25, 1944.

ALFRED E. DRISCOLL  
Commissioner.

2. DISCIPLINARY PROCEEDINGS - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT UPON CORRECTION OF ILLEGAL SITUATION AND EXPIRATION OF 20 DAYS' SUSPENSION - ILLEGAL SITUATION CORRECTED AND 20 DAYS' SUSPENSION HAVING EXPIRED - APPLICATION TO LIFT GRANTED.

In the Matter of Disciplinary Proceedings against

CHRISTY DeANGELO  
604 Market Street  
East Paterson, N. J.,

ON PETITION  
ORDER

Holder of Plenary Retail Consumption License C-13 issued by the Mayor and Council of the Borough of East Paterson.

Herbert F. Myers, Jr., Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

On April 14, 1944 I suspended the license of Christy DeAngelo for the balance of its term, effective at 3:00 A. M. April 21, 1944, after he had pleaded guilty to charges alleging that Leo Baur and Victor T. Buck had an undisclosed interest in the said license and the business conducted thereunder. Re DeAngelo, Bulletin 613, Item 4.

In said order it was provided that, if the illegal situation was corrected, application might be made to me to lift the suspension after the expiration of twenty days from the effective date thereof. Pursuant to said leave, Christy DeAngelo, Leo Baur and Victor T. Buck have filed a petition wherein it is set forth that, on April 19, 1944, the Mayor and Council of the Borough of East Paterson granted a transfer of the license, subject to the suspension heretofore imposed, from Christy DeAngelo to Christy DeAngelo, Leo Baur and Victor T. Buck. A certified copy of the resolution granting the transfer of the license was presented with the petition.

It appearing that the unlawful situation has been corrected, and it further appearing that the twenty-day minimum suspension will expire at 3:00 A. M. May 11, 1944, the suspension will be lifted effective at that time.

Accordingly, it is, on this 8th day of May, 1944,

ORDERED, that the suspension heretofore imposed be lifted, and that Plenary Retail Consumption License C-13, issued by the Mayor and Council of the Borough of East Paterson, be restored to full force and operation, effective at 3:00 A. M. on May 11, 1944.

ALFRED E. DRISCOLL  
Commissioner.

3. AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - LICENSEE CONVICTED OF TRANSPORTATION AND SALE OF ILLICIT ALCOHOLIC BEVERAGES AND FINED \$150.00 (APPEAL OF THIS CRIMINAL CONVICTION PENDING) - LICENSE PREVIOUSLY SUSPENDED IN DISCIPLINARY PROCEEDINGS FOR 20 DAYS - \$50.00 DEPOSIT FORFEITED IN COMPANION SEIZURE PROCEEDINGS - APPLICATION TO LIFT GRANTED.

In the Matter of Petition by )  
CARMFLO CANNIZZARO )  
33 Aspen Street )  
Passaic, N. J., )

ON PETITION  
CONCLUSIONS AND ORDER

To lift the Automatic Suspension )  
of Plenary Winery License No. V-39 )  
issued by the State Commissioner )  
of Alcoholic Beverage Control. )  
-----)

Nicholas Martini, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

It appears from petition filed herein that, on May 5, 1944, petitioner was tried in the Passaic County Court of Special Sessions under an indictment charging the transportation and sale of illicit alcoholic beverages and was convicted and fined \$150.00. Because of the conviction in the criminal proceedings, petitioner's license has been automatically suspended for the balance of its term. R. S. 33:1-31.1. On May 8, 1944 the license was picked up by agents of the Department of Alcoholic Beverage Control. Petitioner now prays that said automatic suspension of his license may be lifted.

It further appears from the petition and from the records of this Department that the Commissioner of Alcoholic Beverage Control, in disciplinary proceedings, previously suspended petitioner's license for a period of twenty days, effective from 12:01 A. M. February 28, 1944 to 12:01 A. M. March 19, 1944, after finding the licensee guilty on charges of delivering wine in violation of Rule 12 of State Regulations No. 20, and packaging and shipping wine in violation of State Regulations No. 24. Re Cannizzaro, Bulletin 607, Item 6. It further appears that, in seizure proceedings, the Commissioner forfeited the sum of \$50.00 deposited, as true value, in lieu of petitioner's seized automobile. The criminal proceedings, the disciplinary proceedings and the seizure proceedings arose out of the same transaction.

The fact that petitioner has taken an appeal to the Supreme Court from his conviction does not entitle him to relief herein. R. S. 33:1-31.1. However, under all the circumstances, I believe that the penalties heretofore imposed in all proceedings are adequate. Hence, the relief prayed for in the petition will be granted.

Accordingly, it is, on this 9th day of May, 1944,

ORDERED, that the statutory automatic suspension of License V-39, issued by the State Commissioner of Alcoholic Beverage Control to Carmelo Cannizzaro for premises 33 Aspen Street, Passaic, be lifted, and said license is hereby restored to full force and operation, effective immediately.

ALFRED E. DRISCOLL  
Commissioner.

4. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - ILLEGAL SITUATION CORRECTED - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against  
 JOHN JOSEPH SCHIBELL  
 (Joseph F. Schibell, Attorney-in-Fact)  
 T/a Club 45  
 45 Liberty Street  
 Long Branch, N. J.,  
 Holder of Plenary Retail Consumption License C-9, issued by the Board of Commissioners of the City of Long Branch, and transferred during the pendency of these proceedings to  
 JOHN JOSEPH SCHIBELL  
 (Joseph F. Schibell, Attorney-in-Fact) and JOSEPH F. SCHIBELL  
 for the same premises.

CONCLUSIONS

AND ORDER

Haydn Proctor, Esq., Attorney for Defendant-Licensee.  
 Gaylord R. Hawkins, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleads guilty to the following charges:

"1. In your application, filed with the Board of Commissioners of the City of Long Branch and upon which you obtained your current plenary retail consumption license for premises 45 Liberty Street, Long Branch, New Jersey, you falsely stated 'No' in answer to Question 30, which asks: 'Has any individual.....other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?', whereas in truth and fact Joseph Frank Schibell was so interested in that he was actually an equal partner with you in the said business; such false statement being in violation of R. S. 33:1-25.

"2. From July 1, 1936 and until the present time, you knowingly aided and abetted the said Joseph Frank Schibell to exercise, contrary to R. S. 33:1-26, the rights and privileges of your plenary retail consumption license for the aforesaid premises, thereby yourself violating R. S. 33:1-52."

Joseph F. Schibell, a brother of the licensee, originally held the license in his own name. He obtained employment with a railroad whose rules prohibited him from operating a tavern. Thereupon, he presumably turned the business over to his brother, John Joseph Schibell, who, from July 1, 1936 until after the filing of these charges, continued the license in his own name. However, Joseph F. Schibell at all times retained a half-interest in the licensed business and continued to draw one-half of the profits derived therefrom.

After the institution of these proceedings the license was transferred to John Joseph Schibell (Joseph F. Schibell, Attorney-in-Fact) and Joseph F. Schibell. The reason Joseph F. Schibell appears

as attorney-in-fact is due to John Joseph Schibell being in the service. Since there is no previous record and the "front" situation has been corrected by said transfer, I shall suspend the license for a period of ten days. Re Starr, Bulletin 590, Item 2. The punishment shall be fully effective against the transferees. State Regulations No. 15, Rule 3.

Accordingly, it is, on this 9th day of May, 1944,

ORDERED, that Plenary Retail Consumption License C-9, issued by the Board of Commissioners of the City of Long Branch to John Joseph Schibell (Joseph F. Schibell, Attorney-in-Fact), t/a Club 45, for premises 45 Liberty Street, Long Branch, and transferred during the pendency of these proceedings to John Joseph Schibell (Joseph F. Schibell, Attorney-in-Fact) and Joseph F. Schibell for the same premises, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A. M. May 15, 1944 and terminating at 2:00 A. M. May 25, 1944.

ALFRED E. DRISCOLL  
Commissioner.

5. RETAIL LICENSEES - HEREIN OF THE SHOWING OF MOTION PICTURES IN TAVERNS.

April 19, 1944

Richard Lowe, Acting Secretary,  
Board of Alcoholic Beverage Control  
Paterson, N. J.

Dear Mr. Lowe:

I understand that a tavern owner in your community is presently engaged in exhibiting motion pictures (16 millimeter film) every half hour from 8:00 P. M. to 2:30 A. M.

I am not in favor of turning a tavern into a motion picture theatre. Aside from laws relating to places where motion pictures are shown (N. S. 5:3-10; R. S. 5:3-21) and pertinent local ordinances, our agents and the local police have plenty of problems on their hands without being called upon to censor motion pictures that some licensees might be tempted to show in a barroom.

I am further of the opinion that the repeated display of moving pictures, as outlined in your letter, constitutes a practice unduly designed to increase the consumption of alcoholic beverages and, accordingly, it should not be permitted.

Very truly yours,  
ALFRED E. DRISCOLL  
Commissioner.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN COLOR, PROOF AND CONTENT - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against )

HENRY DRESSLER )  
2215 Hudson Boulevard )  
North Bergen, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-16, issued by the )  
Municipal Board of Alcoholic )  
Beverage Control of the Township )  
of North Bergen. )

----- )

Henry Dressler, Pro Se.  
Gaylord R. Hawkins, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded guilty to a charge alleging that, on February 26, 1944, he possessed two 4/5th quart bottles of "Four Roses A Blend of Straight Whiskies '90 Proof", the contents of which were not genuine as labeled, in violation of R. S. 33:1-50.

Analysis of the contents of both bottles disclosed that they varied from an original sample in coloring, proof and straight whiskey content.

In the absence, as here, of any previous record or aggravating circumstances attending the instant violation, the usual penalty of ten days will be imposed. Cf. Re Nobile, Bulletin 610, Item 10.

Accordingly, it is, on this 11th day of May, 1944,

ORDERED, that Plenary Retail Consumption License C-16, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the Township of North Bergen to Henry Dressler, for premises 2215 Hudson Boulevard, North Bergen, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 A. M. May 16, 1944 and terminating at 3:00 A. M. May 26, 1944.

ALFRED E. DRISCOLL  
Commissioner.

7. DISCIPLINARY PROCEEDINGS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against )

WALTER SWETKOFF, T/a CONEY ISLAND LUNCH 28 Market Street Camden, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-201, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden. )

Harry H. Teitelman, Esq., Attorney for Defendant-Licensee. Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to charges that he violated R. S. 33:1-52 in that he knowingly aided and abetted Dorothy Rosof and Daniel Cantor to exercise the rights and privileges of his plenary retail consumption license contrary to R. S. 33:1-26.

The pertinent facts developed in the investigation by the A.B.C. agents disclose that the defendant, licensee and owner of the building where the business is conducted entered into a written agreement, dated July 19, 1943, with one Daniel Cantor whereby the latter, under the terms thereof, had exclusive control of the business for one year with the privilege of exercising an option to continue for a like period. Cantor posted a considerable sum of money as security for the merchandise and for the purpose of reimbursement to the defendant in the event a loss was sustained in the operation of the business. The contract called for a payment of \$114.43 weekly, which sum represented rent for the use of the premises, installment payments toward the license fee, Federal stamps and premiums on various types of insurance carried for the benefit of defendant. After the above contract was executed, Cantor entered into an agreement with Dorothy Rosof whereby she obtained some percentage of the profits of the business.

The defendant, in explanation of the violation charged herein, stated that because of his illness he was unable to work on the licensed premises and therefore hired Cantor to be manager of the business. According to the agreement, however, the license was actually "farmed out" to Cantor. Defendant further stated that he was unaware of the fact that he was doing anything contrary to law.

It has been proven to my satisfaction that the contract herein referred to has been abrogated by the various parties as of January 8, 1944. The defendant, since that date, has resumed the active control of the said business enterprise. Inasmuch as the defendant has no previous adjudicated record and the proper correction appears to have been made, a ten-day suspension will therefore be imposed.

Accordingly, it is, on this 11th day of May, 1944,

ORDERED, that Plenary Retail Consumption License C-201, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Walter Swetkoff, t/a Coney Island Lunch, for premises 28 Market Street, Camden, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A. M. May 17, 1944 and terminating at 2:00 A. M. May 27, 1944.

ALFRED E. DRISCOLL  
Commissioner.

8. APPELLATE DECISIONS - ABAD v. NEWARK.

ADELINO VASQUEZ ABAD, )  
Appellant, )  
-vs- )  
MUNICIPAL BOARD OF ALCOHOLIC )  
BEVERAGE CONTROL OF THE CITY )  
OF NEWARK, )  
Respondent )

ON APPEAL  
CONCLUSIONS AND ORDER

Feld & Breitner, Esqs., Attorneys for Appellant.  
George B. Astley, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the action of the respondent, suspending appellant's license for a period of twenty-five days. The appeal was presented upon the stenographic transcript of the proceedings below, the appellant reserving exceptions to the admissibility of certain evidence and exhibits.

Following the hearing in the disciplinary proceedings, the municipal issuing authority found the appellant guilty of the following charges:

"On or about October 18th, 1943 you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to a person or persons actually or apparently intoxicated, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon the licensed premises, in violation of Rule 1 of State Regulations No. 20.

"On or about November 7th, 1943, you sold, served and delivered alcoholic beverages to Alex Fury, Frank Fury and Bernard Bernick, persons under the age of 21 years, and allowed, permitted and suffered the consumption of such beverages by the said Alex Fury, Frank Fury and Bernard Bernick upon your licensed premises, in violation of Rule 1 of State Regulations No. 20.

"On or about November 7th, 1943 you sold, served and delivered alcoholic beverages to Alex Fury, Frank Fury and Bernard Bernick, minors, in violation of Revised Statutes 33:1-77."

Subsequent to the appeal and accordingly after the respondent had lost jurisdiction over the proceedings, the latter, on motion of the appellant, attempted to dismiss the charges in so far as they related to sales of alcoholic beverages to Alex and Frank Fury. This motion was improvidently granted.

Nine reasons are urged by the appellant as ground for the reversal of the respondent's decision. These reasons need not be mentioned in detail. Briefly summarized, they allege that the respondent's findings are against the weight of the evidence, based on prejudice and bias, and the result of the admission of improper evidence. Despite a mass of testimony and an overabundance of argument, the issues below (in so far as they relate to this appeal) were only two in number, namely, (1) did the licensee or his agents sell or serve alcoholic beverages to a person actually or apparently intoxicated; or permit the consumption of same by such person on the licensed premises, in violation of Rule 1 of State Regulations No. 20; and (2) did the licensee or his agents sell, serve or permit the consumption of alcoholic beverages on the licensed premises to a minor, in violation of Rule 1 of State Regulations No. 20 and R. S. 33:1-77.

The ultimate question presented by the record on this appeal, therefore, is one of fact. Notwithstanding the "de novo" character of the appeal, the Commissioner, in his determination of the issues, should affirm where there is competent evidence in the record "from which the conclusion of the administrative tribunal (the local issuing authority) could be deduced." Cf. Vajtauer v. Commissioner of Immigration, 273 U. S. 103, 106. Under the Rules Governing Appeals, the burden of proving reversible error rests with the appellant.

The testimony discloses that, during the early evening of October 18, 1943, Daniel ---- entered the appellant's licensed premises. He testified that he was sober when he entered. His recollection of the events which took place between the time of his entry and when he was "put out", around 11:30 P. M., is extremely vague. He remembers drinking cocktails and subsequently beer. He concedes that he "must have had quite a few drinks" and "must have been" drunk. Beyond this, he is unable to shed any light on what took place in the tavern prior to his ejection. The police, responding to a call from the tavern, found Daniel lying on the sidewalk adjacent to the side entrance of appellant's premises, with a cut on the side of his head and bleeding profusely. The officers testified that Daniel was "under the influence of liquor", "incoherent" and "intoxicated."

It appears from the record that when Sergeant Bailey, a witness for the respondent, questioned appellant's bartender, the latter first denied knowing anything about the injured person. He later is alleged to have admitted, however, that Daniel had entered the tavern and ordered a drink, which he stated was taken away from Daniel when he observed that Daniel was in a "drunken condition." The bartender, testifying for the respondent, denies that Daniel was in the saloon for any length of time and states that Daniel "wasn't intoxicated" but "wasn't fit enough to have a drink in the saloon." Accordingly, the bartender testified he refused to serve Daniel and asked him to leave. This witness states Daniel "went out by himself."

A disinterested witness, however, one Michael Padmos, testified that, when he entered the licensed premises on the evening in question, he noticed Daniel seated at the bar talking to a woman. This witness describes Daniel as being "pretty well intoxicated." The

witness distinctly remembers Daniel being served by the bartender with a beer and another drink of dark brown color. He states further that Daniel consumed his drinks immediately and shortly thereafter, following an unsuccessful effort to put his arm around his companion, who pushed him away, nearly fell off his chair. It was after this incident, Padmos states, that the bartender came from behind the bar, took Daniel by the collar, pushed him over to the door, and "shoved him" out of the licensed premises.

Counsel for the appellant argues that there is no proof that Daniel was served alcoholic beverages when he was actually or apparently intoxicated. Counsel contends that every person has a "saturation point" and that "Daniel may have been perfectly all right until after the alleged drink was served" when "he entered that state of intoxication where he started to annoy others." Aside from the fact that it would be foolhardy for licensees to ignore all of the storm warnings that clearly indicate when a person has had sufficient alcoholic beverages and to adopt a last drink theory, it is perfectly apparent that the respondent, after having heard all of the testimony, reached the conclusion that Daniel was actually or apparently intoxicated prior to the service of his last drink. After having closely scrutinized all of the pertinent and admissible testimony in the record on this point, I have reached the conclusion that respondent's finding of fact is adequately supported by the testimony and, accordingly, should be sustained.

I am unwilling to believe that it was the last drink that caused Daniel to cross the divide that separates apparent sobriety from apparent intoxication. I am impressed by the testimony of Daniel that he was in the premises from early evening until 11:30 P. M. and that during this interval he consumed "quite a few drinks." I believe his testimony that when he entered the licensed premises he was sober. There is no doubt in my mind that he was apparently intoxicated when he was put out. I am similarly impressed by the testimony of Padmos. I was not impressed by the witnesses called by the licensee. Accordingly, my finding of fact on this issue supports the decision of the respondent.

With reference to the second issue, one Bernard ----- testified that, on November 7, 1943, he entered the licensed premises in the company of two other companions, both of whom were sailors. He testified that he was served beer by appellant's bartender and that, after consuming a portion of the beer, he left the premises.

Otto T. Dreher, a member of the Newark Police Department, testified that, early in the morning on November 7, 1943, while he was in the licensed premises, he observed three young men, including two sailors and a civilian, the latter being Bernard, enter the licensed premises. He testified that they were served three beers and that, after consuming the same, left the premises. The officer followed the two sailors and Bernard out of the tavern and subsequently, in company with his partner, Irving Zillmeier, likewise a member of the Newark Police force, detained the boys and asked them their respective ages. One of the officers testified that Bernard quite obviously appeared to be a minor. When Bernard was taken back to the tavern with one of the officers, he immediately identified the bartender as the person who had served him. The licensee denies that the three boys visited his place together and, in particular, denies that Bernard was served or permitted to consume any alcoholic beverages on November 7, 1943. The licensee insists that Bernard had been in his premises earlier in the evening and that he had refused to serve him beer whereupon, he says, the boy stated, "I'll get even with you."

The respondent, despite the contradictory testimony offered by the licensee, apparently believed the testimony of the police officer that the three boys were served and permitted to consume alcoholic beverages on the licensed premises on November 7, 1943. I too am convinced that the story told by the police is creditable. There is no reason why they should have stated anything other than a straightforward story of what they actually saw and did on the night in question.

Bernard testified that he was born on November 26, 1925 at Plymouth, Pennsylvania; that his mother's first name was Elizabeth, and that her maiden name was Stpinski. These facts are partially corroborated by a certified copy of a certificate of birth of the Bureau of Vital Statistics of the Commonwealth of Pennsylvania, admitted in evidence. The testimony of Bernard with respect to his age is competent and admissible. A minor is a qualified witness to testify as to his own age. See Wigmore on Evidence, Section 667; State v. Huggins, 83 N. J. L. 43; Re Abrams, Bulletin 562, Item 8.

Appellant, relying on the case of State v. Horton, 109 N.J.L. 450, argues that the admission in evidence of the certified copy of the birth certificate constitutes reversible error. In the cited case, Mr. Justice Parker, after conceding the admissibility of the testimony of the minor with respect to her age, held that the admission of the certified, but not exemplified, certificate was "harmful error", for which the judgment below should be reversed. Aside from pointing out that neither the respondent nor the Commissioner are bound by the strict rules of evidence,\* it is pertinent to note that Mr. Justice Parker's decision that the admission of the certificate was "harmful error" rests upon his finding that it "must have been relied on by the jury." While I am of the opinion that in the administrative proceedings before the respondent, as well as on this appeal, the certified copy of the birth certificate of Bernard was admissible for the purpose for which it was admitted, namely, corroboration of other "competent" and "relevant" testimony, I have not relied upon it in reaching the decision that Bernard was a minor on November 7, 1943. His own testimony was sufficient to establish that fact in the disciplinary proceedings before the respondent and on this appeal.

The decision of the respondent, to the extent that it finds the licensee guilty of selling alcoholic beverages to the minor, Bernard, is affirmed.

It does not clearly appear in the record whether respondent intended its decision to cover the charges of selling alcoholic beverages to the alleged minors, Alex and Frank Fury. On the assumption that it did, it will be reversed in so far as it covers the last named persons. These boys were not called as witnesses. Their respective ages were not established by competent testimony. This conclusion is in line with the action which the respondent itself improvidently took on February 17, 1944.

\*While an administrative agency has been freed from many of the technical rules of evidence that were developed as necessary safeguards in common law jury procedure, it is nonetheless duty bound to observe those rules that actually rather than theoretically insure justice and the basic concepts of fair play. These basic rules include sworn testimony, appearance of witnesses, the right of cross-examination, and the right to enter objections on the record. The ultimate finding of fact must be based upon some competent evidence in the record.

The only remaining question to be considered is the suspension imposed by the Board. This suspension, while inartistically stated, constituted a proper punishment. Respondent, in determining the suspension, was fully justified in taking into consideration the previous record of the licensee. As a matter of fact it could, if it had so desired, imposed an even greater suspension. The recommended minimum suspension for sales to intoxicated persons is twenty days and for sales to minors, where there are no aggravating circumstances or previous record, ten days.

The record does not support the appellant's charge that respondent's decision was based on prejudice and bias. There is a strong presumption in favor of the correctness of the conclusion reached by an experienced administrative agency after full hearing. The presumption is not merely that the issuing authority's conclusion is correct, but also that it acted fairly. Cf. Des Moines Gas Co. v. Des Moines, 238 U. S. 153. In the absence of clear evidence to the contrary, it will be assumed that the members of the local issuing authority properly discharged their duties. On appeal the Commissioner is empowered to make all findings, rulings, decisions and orders that may be right and proper and consonant with the spirit of the Alcoholic Beverage Law. R. S. 33:1-38.

Accordingly, it is, on this 12th day of May, 1944,

ORDERED, that the above appeal be and the same is hereby dismissed; and it is further

ORDERED, that the twenty-five day suspension by respondent of appellant's plenary retail consumption license C-222, for premises 218 Mulberry Street, Newark, which suspension was held in abeyance pending disposition of the instant appeal, is hereby restored, to commence at 2:00 A. M. May 19, 1944, and to terminate at 2:00 A. M. on June 13, 1944.

ALFRED E. DRISCOLL  
Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BY CLUB LICENSEE DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - SALE OF ALCOHOLIC BEVERAGES BY CLUB LICENSEE TO NON-MEMBERS, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 7 - SALE OF ALCOHOLIC BEVERAGES BY CLUB LICENSEE DURING PROHIBITED HOURS FOR OFF-PREMISES CONSUMPTION, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 AND RULE 5 OF STATE REGULATIONS NO. 7 - 40 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against )

INTERNATIONAL WORKERS ORDER )  
BRANCH NO. 2586 )  
457 Berkeley Street )  
Camden, N. J., )

CONCLUSIONS AND ORDER

Holder of Club License CB-29 )  
issued by the Municipal Board of )  
Alcoholic Beverage Control of the )  
City of Camden. )

----- )  
Felix Tofani, Secretary, appearing for International Workers Order Branch 2586.

Edward F. Hodges, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads guilty to charges alleging that it sold alcoholic beverages after 2:00 A. M. on Sunday, in violation of a local ordinance, and that it sold alcoholic beverages to persons other than bona fide members and their bona fide guests, in violation of Rule 5 of State Regulations No. 7.

The file herein shows that two investigators of the Department of Alcoholic Beverage Control entered defendant's premises at about 9:00 P. M. on Sunday, April 2, 1944, and purchased alcoholic beverages. Neither investigator was a member or a guest of a member of defendant club. There were about twenty-one persons in the premises, many of whom were drinking alcoholic beverages.

Defendant has no prior record. The usual suspension for unlawful sales on Sunday is fifteen days, and the usual suspension for sales to non-members is also fifteen days. Re Penns Grove Lodge, Bulletin 615, Item 2. Five days will be remitted for the guilty plea, making a net suspension on the charges mentioned above of twenty-five days.

Defendant pleaded not guilty as to additional charges alleging sale and delivery of alcoholic beverages for off-premises consumption on Sunday, in violation of Rule 1 of Regulations No. 38 and Rule 5 of State Regulations No. 7, and sale of alcoholic beverages to a woman directly over a bar, in violation of a local ordinance.

One of the investigators testified that, during their visit, his companion asked for "three bottles of beer to take out" and that the bartender placed the bottles in a paper bag and gave them to his companion. The investigator testified also that he saw a woman served a drink of alcoholic beverages directly over the bar. The secretary of defendant club gave no evidence concerning the sale for off-premises consumption, but denied that the woman had been served

over the bar. He admitted, however, that two women were in the premises. I find defendant guilty as charged.

Since these additional charges are closely connected with the first charges set forth herein, the suspension will be increased from twenty-five to thirty-five days because of the finding of guilty as to the additional charges.

Accordingly, it is, on this 15th day of May, 1944,

ORDERED, that Club License CB-29, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to International Workers Order Branch No. 2586, for premises 457 Berkeley Street, Camden, be and the same is hereby suspended for thirty-five (35) days, commencing at 2:00 A. M. May 22, 1944, and terminating at 2:00 A. M. June 26, 1944.

ALFRED E. DRISCOLL  
Commissioner.

10. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - REBOTTLING - HINDERING INVESTIGATION - 40 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against )

BLUE MOON BAR & GRILL, INC. )  
46 Jay Street )  
Englewood, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-14, issued by the Common Council of the City of Englewood. )  
----- )

Blue Moon Bar & Grill, Inc., by Otto Mongiello, President.  
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded guilty to charges alleging that (1) it sold illicit wine, (2) it possessed illicit wine, (3) it bottled an alcoholic beverage for sale, and (4) it hindered an investigation made by ABC agents.

On February 19, 1944, and again on February 21, 1944, an ABC agent purchased, from the defendant's bartender, a pint bottle of wine which was poured into the bottle from an unlabeled jug bearing no indicia of tax payment. The agent also purchased several drinks of this wine on February 21 and 23, 1944.

On February 23, 1944, after the agents had disclosed their identity to the bartender, he attempted to empty the contents of the unlabeled jug into the bar drain but was prevented from doing so by the agents. Subsequently, on the same day, the agents searched the private dwelling of Otto Mongiello, who is the beneficial owner of all the stock of the corporate licensee, and there seized six 50-gallon barrels and five 1-gallon jugs of home-made wine.

In the affiliated seizure proceedings, no one appeared to claim the seized property, and all of the wine taken from Mongiello's home,

together with several other jugs of wine seized at the tavern, was declared forfeited.

In a written statement obtained from Mongiello, he admitted having manufactured all of the wine, although insisting that it was originally intended for his own personal consumption. The manufacture was unlawful because no permit had been issued therefor, because the wine was used for the purpose of resale and because, in any event, even with a permit, the manufacture is limited in quantity to 200 gallons. See State Regulations No. 15.

In these days of liquor shortage, there is a great temptation on the part of retail licensees to bolster their sales by supplementing their legitimate stock with liquor obtained through unlawful sources. The greater the temptation, however, the greater must be the penalty that will effectively deter the commission of the violation.

In a similar case, decided September 2, 1943, I imposed a penalty of fifteen days, with the following admonition:

"I hereby warn all licensees that, in cases of this kind hereafter arising, the penalty may be substantially increased." Re Fiorello, Bulletin 585, Item 2.

In order to wipe out this practice of retail licensees possessing and selling non-taxpaid alcoholic beverages, I now fix the normal penalty for this type of offense at thirty days. If this proves inadequate, further appropriate curative measures will be taken.

In addition to the hindering charge (see (4) above), the license of this defendant was heretofore suspended by the local issuing authority, in July 1943, for a period of ten days for conducting its premises as a nuisance. Under all of the circumstances, including a consideration of the guilty plea, I shall suspend the license for a period of forty days.

Accordingly, it is, on this 15th day of May, 1944,

ORDERED, that Plenary Retail Consumption License C-14, issued by the Common Council of the City of Englewood to Blue Moon Bar & Grill, Inc. for premises 46 Jay Street, Englewood, be and the same is hereby suspended for a period of forty (40) days, commencing at 1:00 A. M. May 19, 1944 and terminating at 1:00 A. M. June 28, 1944.

ALFRED E. DRISCOLL  
Commissioner.

11. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO WOMEN OVER THE BAR, IN VIOLATION OF LOCAL ORDINANCE - 3 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against WILLIAM LORUSSO T/a LORUSSO'S CAFE 241 Stevens Street Camden, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-144, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

Bruce A. Wallace, Esq., Attorney for Defendant-Licensee. Edward F. Hodges, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded guilty to a charge alleging that, on March 10, 1944, he served alcoholic beverages to two women directly over a bar on his licensed premises, in violation of local ordinance.

The women were observed drinking beer while seated at stools in front of the defendant's lunch bar, which is located in the same room as the liquor bar.

The fact that the lunch bar is used primarily for the service of food does not excuse the instant violation. The local regulation interdicts the service of any beverage to women "over any bar." No distinction is made between regular liquor bars and so-called lunch bars. It is apparent that the local authorities intended that women shall be served only while seated at tables. Cf. Re Hencinski, Bulletin 546, Item 3.

A consideration of the guilty plea and the circumstances surrounding the offense justifies the imposition of the minimum penalty of three days. Re Hencinski, supra.

Accordingly, it is, on this 16th day of May, 1944,

ORDERED, that Plenary Retail Consumption License C-144, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to William Lorusso, t/a Lorusso's Cafe, for premises 241 Stevens Street, Camden, be and the same is hereby suspended for a period of three (3) days, commencing at 2:00 A. M. May 23, 1944 and terminating at 2:00 A. M. May 26, 1944.

Alfred E. Driscoll Commissioner.